



THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

OFFICIAL RECORDS

Volume II

SUMMARY RECORDS OF MEETINGS

FIRST COMMITTEE: 1st TO 17th MEETINGS

SECOND COMMITTEE: 1st TO 46th MEETINGS

THIRD COMMITTEE: 1st TO 17th MEETINGS

Second Session: Caracas, 20 June-29 August 1974



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INTRODUCTORY NOTE

The Official Records of the first and second sessions of the Third United Nations Conference on the Law of the Sea comprise three volumes, as follows:

Volume I: This volume contains the records of the Plenary meetings held during the first and second sessions and meetings of the General Committee held during the second session (the General Committee did not meet during the first session).

Volume II: This volume contains the records of the meetings of the First, Second and Third Committees held during the second session (the Committees did not meet during the first session).

Volume III: This volume contains most of the documents issued by the Conference during its first and second sessions. It also contains a check list of all the documents relating to the work of the Conference.

The agenda of the Conference and the allocation of the items included in the agenda appear in paragraph 40 of document A/CONF.62/L.8/Rev.1 (see vol. III).

The lists of delegations participating in the first and second sessions of the Conference appear in documents A/CONF.62/INF.1 and Add.1 and A/CONF.62/INF.3/Rev.2, which have been issued separately.

The rules of procedure of the Conference have been issued as a United Nations publication (Sales No. E.74.I.18).

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol in the text indicates a reference to a United Nations document. The Conference documents bear the symbol A/CONF.62/ . . . , followed by capital letters and figures.

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The summary records contained in the present volume were originally distributed in provisional form as documents A/CONF.62/C.1/SR.1-17, A/CONF.62/C.2/SR.1-46 and A/CONF.62/C.3/SR.1-17. They include the corrections to the provisional summary records that were requested by the delegations.

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FIRST COMMITTEE



1st TO 17th MEETINGS

[The agenda and the officers of the Committee appear in Volume III of the Official Records of the Third Conference on the Law of the Sea, document A/CONF.62/L.8/Rev.1, annex I.]

FIRST COMMITTEE

1st meeting

Wednesday, 10 July 1974, at 10.40 a.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Organization of work

1. The CHAIRMAN said that the Caracas meeting was the culmination of a long and arduous effort that had fostered an awareness of the multidimensional importance of the oceans to mankind and of the magnitude and complexity of the problems of their utilization. In the past some attempts at regulation and organization had been made, but had met with little or no success. In recent years, however, a considerable number of new countries had appeared on the scene and they had exerted revolutionary pressures on the existing order, which they had not helped to establish and whose rules they did not always accept, as witnessed by the increasingly frequent disputes over fishing, the unilateral extension of territorial waters and specialized jurisdictions, all symptoms of the need to alter the legal framework governing the oceans.

2. The task of the Conference, and more particularly of the First Committee, was therefore to build a new legal order for the oceans, pragmatic and durable enough to harmonize diverse interests, while taking account of the wider realities of history. The Committee must legislate for posterity, adopting treaty articles that could withstand inevitably changing times. The Conference was fortunate in being equipped with a number of new conceptual elements, and the First Committee would have as its working base the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof beyond the Limits of National Jurisdiction;¹ it should also take account of the concept that the area and its resources constituted the common heritage of mankind, which transcended the inherent opposition between the doctrines of *res nullius* and *res communis*. That, together with the plan to establish an international régime and machinery to ensure the "orderly and safe development and rational management of the area and its resources" for the benefit of "mankind as a whole", offered a number of new approaches that promised to halt and reverse the descent into chaos. More specifically, the issues to be dealt with related to the status, scope and basic provisions of the régime to be established based on the Declaration of Principles, and the status, scope, functions and powers of the international machinery.

3. Each State or group of States was the best judge of its own needs, interests and priorities. It was therefore important to listen to others and to be heard by them, for there could be no true spirit of compromise without an understanding of what truly hurt others. In international relations it was becoming obvious that economic, political or numerical threats were no longer effective, and that was another important reason for trying to reconcile conflicting views born of the divergency of interests and needs. Every delegation should therefore be imbued with a sense of its responsibility towards its own country and also towards the international community as a whole.

4. Turning to the question of the organization of the work of the Committee, he said that the Conference had only 36 working days left to conclude its work. During that period, the First Committee must negotiate treaty articles and have them included in a larger framework to be submitted for adoption by the Conference as an integral part of the convention on the law of the sea. He therefore appealed to representatives not to waste time on procedural matters and, in organizing their work, to allow sufficient latitude to modify and adapt current positions to future requirements.

5. He also requested representatives to be fully aware of the nature and complexity of the task entrusted to the Committee. The preparatory committee had been able to do no more than assemble widely divergent views in a set of documents, while the task of the First Committee was to negotiate in order to reconcile divergent views and then to draft the actual provisions of a convention. He stressed the fact that the Committee had not only to take political and economic decisions, but to provide the juridical background for the convention as a whole.

6. In connexion with the organization of the work of the Committee, he said that, after consulting with members of the General Committee and geographical groups, he wished to make certain proposals. From those consultations it was clear that it would be prudent to start with a brief period of debate in which representatives would not only merely reiterate their national position, but would comment on fundamental issues, the resolution of which would facilitate a consensus on the main points of disagreement, and in particular would try to eliminate the list of alternatives that appeared in the documents of the preparatory committee. He proposed that the debate should open that same day, that it should be limited to one week, that the list of speakers should be closed on 12 July at 5 p.m., and that statements should be restricted to no more than 10 or 15 minutes at the most.

7. In consultations he had held on issues before the Committee, two problems had aroused strong feelings on the part of some delegations: the economic implications of sea-bed exploitation, and the rules and regulations covering such exploitation. Those two questions could not fruitfully be discussed in detail in the opening debate. The Committee would study them later, but the timing and method of their consideration should be the subject of further consultation.

8. After the short opening debate, the Committee could be converted into an informal body of the whole which would meet for two weeks while it attempted to eliminate unnecessary brackets and alternatives in the documents, thus providing a basis for realistic negotiations later. However, he did not exclude the possibility of eliminating all the brackets and alternatives if the Committee could immediately reach a consensus. After that period, the Committee would hear an oral report on its work. Meanwhile, he would hold further consultations on the next stage of the work of the Committee.

¹ General Assembly resolution 2749 (XXV).

9. In view of the consultations he had held on the subject, he proposed that Mr. Pinto of Sri Lanka should head the informal body.
10. Mr. GALINDO POHL (El Salvador) paid tribute to the Chairman, whose experience was known to all. He had been asked by the Latin American countries to express their support of the statement just made by the Chairman. The Latin American countries approved the division of the work of the Committee into official and informal meetings, and the nomination of Mr. Pinto as Chairman for the latter. They also approved the suggestion to conduct the general debate within the limits suggested by the Chairman, on the understanding that they represented not a rigid time-table, but an appeal to the delegations to show due restraint, and that the general debate would be sufficiently flexible to enable new participants in particular to express their views. The Latin American countries also agreed to proceed as soon as possible to the stage of informal discussions and to begin real negotiations. The appropriate starting-point for those negotiations appeared to be a third reading of the existing texts, in order to remove the square brackets which still remained and to identify the key points for negotiation.
11. Mr. ILLANES (Chile) wished to underline the importance of the question of the economic impact of the exploitation of mineral resources of the sea-bed on the production of countries, in particular of developing countries, which exploited land-based deposits of the same minerals. In addition to the report of the Secretary-General (A/CONF.62/25), there were also a number of documents prepared by the United Nations Conference on Trade and Development (UNCTAD) on that subject which merited careful examination. It would be most useful if a representative of that organization were able to attend to present those documents.
12. Mr. HYERA (United Republic of Tanzania) approved the proposals made by the Chairman and merely wished to say that, in his opinion, the primary task of the informal discussions should be to examine questions of substance; he did not think that it would be possible to overcome the existing difficulties in the course of official meetings.
13. Mr. MANNER (Finland), speaking on behalf of the group of Western European and other countries, welcomed the appointment of Mr. Engo as Chairman of the discussions. The group approved the Chairman's proposals as a basis for organizing the work of the Committee.
14. Mr. ADEDE (Kenya) supported the Chairman's proposals and pointed out that, while delegations which had not yet had an opportunity to express their views should be given an opportunity to do so, the discussions should be directed towards a search for solutions, without spending any time on policy statements which were already known. He endorsed the opinion of the representative of the United Republic of Tanzania on the importance of informal negotiations. It was to be hoped that a third reading of the text would enable a new document to be prepared which removed existing differences.
15. Mr. FONSECA TRUQUE (Colombia) said he agreed entirely with the Chairman's proposals and suggested that the text should be published in full.
16. Mr. DE SOTO (Peru) agreed with the representative of Chile that the Committee should be able to examine in depth the economic impact of the exploitation of mineral resources from the sea-bed on the land-based production of the same minerals by developing countries. With regard to documents prepared by UNCTAD, he wished to know what those documents were and whether a representative of UNCTAD could attend in order to present them.
17. Mr. LEVY (Secretary of the Committee) explained, in reply to the question raised by the representatives of Chile and Peru, that there were, in addition to the report of the Secretary-General on the economic implications of sea-bed mineral development in the international area (A/CONF.62/25), several documents prepared by UNCTAD, a list of which was given in document A/CONF.62/26. A representative of UNCTAD was expected on 15 July, but it was not yet known how long he would stay in Caracas.
18. Mr. PINTO (Sri Lanka) congratulated the Chairman and assured him of the support of the Asian group for the proposals he had just made. He wished to draw attention to the importance of the question of the economic impact of sea-bed mineral development on the land-based production of minerals, and of the question of the general principles which should govern the exploitation of the sea-bed. He thought it would be difficult to ask delegations to refrain from discussing the subject. He endorsed the opinion of the representative of Colombia that the Chairman's statement should be published in full.
19. Mr. JEANNEL (France) said he was particularly glad to have Mr. Engo as Chairman of the Committee. His delegation thought that the methods suggested were excellent. The Committee should dispense with theoretical discussions and come to grips with the concrete problems. His delegation welcomed the very valuable support which Mr. Pinto would give.
20. Mr. PALACIOS (Bolivia) said he fully agreed with the Chairman's proposals and would merely stress the need to make the work of the Committee as flexible as possible.
21. Mr. KEDADI (Tunisia) fully endorsed the Chairman's proposals. In particular, the general debate should be limited as much as possible, while States which had not participated in the work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction should be given an opportunity to express their views. He also endorsed the opinion of the representative of the United Republic of Tanzania that absolute priority be given to the negotiations, in order to reconcile different points of view. He also supported the suggestion of the representative of Chile that the Committee should examine the documents prepared by UNCTAD and hear a representative of that body.
22. His delegation would like to know whether a document existed or was being considered on the problem of the distribution of the profits from the exploitation of the international zone. If the Secretary-General's report and the UNCTAD documents were not sufficiently specific on that point and did not provide the necessary background information, he asked whether the Secretariat could not prepare a working document on the subject.
23. Mr. LEVY (Secretary of the Committee) noted that the sea-bed Committee had examined the question of the distribution of profits from the development of the sea-bed and that documents had been prepared on it by the Secretariat in 1970 and 1971. No new document by the Secretariat on the subject existed and it was not possible to express an opinion on the suggestion without further details from the representative of Tunisia.
24. The CHAIRMAN said that, if there were no objections, he would consider that the Committee approved the proposals made in his initial statement, having regard to the observations which had been made subsequently, and decided to have the text of the statement published in full.

It was so decided.²

The meeting rose at 11.55 a.m.

²The full text of the Chairman's statement has been issued as document A/CONF.62/C.1/L.1.

2nd meeting

Thursday, 11 July 1974, at 10.40 a.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon)

Statements on the international régime and machinery

1. Mr. WUENSCHÉ (German Democratic Republic), after congratulating the Chairman on his election, said that the exploration and exploitation of the sea-bed and its subsoil should be carried out in accordance with the basic principles of international law in the interests of all peoples and exclusively for peaceful purposes.
2. It followed from the basic principles of international law that the régime of the international sea-bed should not affect the legal régime of the superjacent water and air space which were a part of the high seas, and that each State had the sovereign right to share in the exploration and exploitation of the sea-bed and its subsoil. The geographical situation of a State should by no means serve as a pretext for any differences in the treatment of member States of the sea-bed organization. He hoped that the provisions stating that the sea-bed would be used for the benefit of mankind as a whole, with special consideration for the needs of the developing countries, would help to overcome to a certain extent the economic, scientific and technological differences between countries, which was one of the most regrettable legacies of colonialism.
3. The concept of the common heritage of mankind could be defined only in relation to the basic principles of international law and the other principles laid down in General Assembly resolution 2749 (XXV), and it implied respect for the following principles: no State should be allowed to exercise sovereignty over any part of the international sea-bed or its subsoil; a State could acquire rights of property only over mineral raw materials which had been extracted; all States should have the same rights in the exploration and peaceful utilization of the sea-bed and its subsoil; the interests of the developing countries, land-locked States and other geographically disadvantaged States should be duly taken into account; States should be held responsible for activities not in accordance with the norms of a future convention on the law of the sea. No State or group of States should be allowed to derive one-sided advantages from an international legal regulation of the utilization of the resources of the sea-bed and its subsoil; lastly, the traditional uses of the high seas, such as free navigation and overflight, the right of each State to lay cables and pipelines in the high seas, and the option to carry out scientific research, should not be restricted.
4. His delegation supported the establishment of an international sea-bed organization whose main functions would be to co-ordinate the activities of States in the international area, to make the scientific results of those activities accessible to all States, to organize at the international level the exchange of experience and transfer of technology and, in particular, to assist the developing countries in undertaking research and exploitation activities. The organization should also be responsible for ensuring the equitable distribution of the mineral resources, with special regard to the interests of the developing countries. All States parties to the convention on the law of the sea should, of course, also be able to become members of the organization. His delegation supported the participation of national liberation movements recognized by regional organizations. Co-operation of other intergovernmental organizations with the sea-bed organization should be regulated in co-ordination agreements concluded in accordance with international public law.
5. With regard to the structure of the sea-bed organization, he recommended the establishment of a general assembly, a council and a secretariat. The assembly would deal with the fundamental questions regarding the exploitation of the resources and the general rules for the prevention of pollution and with all matters connected with the implementation of the statute of the sea-bed organization, and it would make relevant recommendations. Due account should be given, in constituting the council, to the principle of the sovereign equality of States, equitable geographical representation and the interests of all States and groups of States. The council would co-ordinate the activities of States in the exploration and exploitation of the mineral resources, make available scientific knowledge, prepare draft conventions on problems of exploration and exploitation, prepare budget estimates and submit reports to the assembly on its activities. The council should also be entitled to conclude agreements with the United Nations, other intergovernmental organizations and States on behalf of the sea-bed organization and following deliberation in the general assembly. Consideration could also be given to attaching a commission to the council which would deal with the granting of licences for exploitation and prepare the decisions of the council. Licence contracts should be concluded in accordance with international law between the sea-bed organization and one or more States and should regulate the following: delimitation of the part of the sea-bed and its subsoil to be exploited; maximum amount of minerals to be exploited; duration of exploration and exploitation; modalities and the maximum amount of payments in cash or in kind by the exploiting State; participation of nationals of developing countries in research and extraction for the purpose of training, and responsibility for damages arising in connexion with exploration and exploitation. Legal and natural persons should be allowed to share in the exploration and exploitation of the mineral resources of the sea-bed and its subsoil only on behalf of and under the responsibility of the State or group of States which had concluded the contract with the sea-bed organization. Thus, in a relatively short period of time comprehensive estimates could be made of mineral resources, States could exercise the right to exploit for only a limited period in a limited area, a limited quantity of minerals, the interests of all States, particularly developing countries, would be taken into account through revenue-sharing and the training of specialists, the sea-bed organization would be able to regulate the amounts extracted and the distribution of revenues and, in the case of contracts concluded with States whose international responsibility would be expressly stated, national and transnational monopolies would be prevented from using licences to gain maximum profits.
6. His delegation was prepared to participate actively and constructively in seeking solutions agreed to by all participating States. It would present its comments on various questions under consideration as the work of the Committee proceeded.
7. Mr. PINTO (Sri Lanka), after recalling the part played by the representative of the United Republic of Cameroon as Chairman of Sub-Committee I of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction expressed his satisfaction at seeing him Chairman of the First Committee and pledged his full co-operation with the members of the General Committee.
8. The principal issues before the Committee related either to the fundamental principles of the international régime or to the

structure and functions of the international authority. In considering the first of those two problems, the Committee would have to define the limits of the area of the sea-bed beyond national jurisdiction. Three different definitions of those limits were included in the alternatives of article I of the text annexed to the report of Sub-Committee I of the sea-bed Committee (A/9021 and Corr. I and 3 vol. II, p. 51). It was perhaps still too early to try to reconcile the national jurisdiction claims of coastal States and the objections that had been raised to those claims, and it would be easier to reach a compromise if the Committee reached agreement on two related questions: first, to what extent and under what conditions land-locked States and States which considered themselves geographically disadvantaged might be permitted to explore and exploit the area under the jurisdiction of coastal States; secondly, whether a coastal State whose continental margin extended beyond the limits of the area under its jurisdiction might be willing to share with the international community the resources and other benefits of the area between the outer limits of its own area and the edge of the continental margin. In considering the first of those two questions, the Committee would also have to consider activities regarding exploration and exploitation considered from three different viewpoints in the alternatives of articles 3, 7, 13, 14 and 15, and it would also have to deal with scientific research covered in article 11. The same divergence of views was to be found on the question of scientific research as on activities regarding exploration and exploitation. While some States advocated freedom of scientific research, others felt that it should be subject to certain controls. Perhaps those who advocated maximum freedom for scientific research and those who advocated the minimum of controls might be able to reach a compromise. He also suggested that the expression "scientific research" should be defined as detailed observation and analytical activity which had as its sole objective a better understanding of the nature and characteristics of the area and its resources and of the physical environmental factors.

9. Another problem concerning principles which arose for land-locked States and geographically disadvantaged States was that of the right of access to and from the area. The convention should specify that the exercise of that right would be the subject of negotiation and agreement between the States concerned, and it should also define the expression "geographically disadvantaged States". There would seem to be few States that were not disadvantaged in some way; only an island with a gradually sloping continental or insular shelf extending in all directions to a distance of 200 nautical miles, with no neighbouring State closer than 400 nautical miles, could claim not to be disadvantaged. Without making light of the difficulties faced by the States he was referring to, he drew the attention of the Committee to the need to define that expression. A transit State with access to the sea might have considerably less resources than a land-locked State and might try to use its geographical advantage to redress what it might well regard as a "geological" disadvantage. The interests of different countries should be reconciled by granting to land-locked States the right of transit and then providing that the modalities of the exercise of that right should be worked out in direct bilateral negotiation.

10. Turning to the second problem, the problem of the organization itself, he said that the Committee should take account of the fact that the sea-bed and ocean floor beyond national jurisdiction and the resources thereof constituted the common heritage of mankind, and that the area and its resources should be explored and exploited in the interests of mankind as a whole, particular consideration being given to the needs of developing countries. The Committee should also bear in mind that the technology and financial resources needed to exploit the area and its resources and to make full use of the data and raw materials derived from such activities were at the present time in the possession of very few States and very often in the

hands, not of State enterprises, but of private enterprises. Those enterprises should therefore be given, in addition to the necessary funds, the chance to develop, for they would be acting as agents of the international community. The ocean floor might contain limitless wealth, but at the present time all that was known was the presence of primarily manganese nodules, and it was the exploitation of those nodules that should be planned at the present time. The investment required for the commercial exploitation of the nodules could amount to about \$500 million. Consequently, a system should be devised to encourage or compel those who had the means to exploit the wealth for the good of mankind as a whole, subject to controls to ensure that all peoples would receive their legitimate share of the benefits, that the resources were exploited rationally and without damage to the environment, and that States were secure against any adverse economic effects of such exploitation.

11. The Committee had also to take a decision on which system it would adopt; three systems had been suggested, all providing for the establishment of a new international organization. Those who supported the first system conceived of the new organization as an administrative authority empowered to issue licences for exploitation to States or private entities and to establish general rules providing for safe and rational exploitation. Proponents of the second system contemplated an organization with wider powers, entitled not only to issue licences but also to explore and exploit resources with its own funds, equipment and personnel. Under the third system that had been proposed, an enterprise with a monopoly on sea-bed exploration and exploitation would be established as an arm of the new organization. At first sight, the proposed systems seemed very different but, on reflection, the similarities in essentials were striking. The sea-bed would be explored and exploited by entities which already possessed the necessary technology and financial resources under arrangements in writing to ensure distribution of revenues and other benefits among the members of the international community, to ensure safe and rational exploitation, to protect the environment and, perhaps, to minimize the economic effects caused by the fluctuation of prices of raw materials recovered through sea-bed exploitation. The main difference between the systems related to the degree to which the new organization would control the activities of the entity carrying out exploration and exploitation. The Committee should concentrate on that point as soon as possible to try to gain a clear idea of what the different views were and to reconcile them.

12. All the proposals concerning the structure and functions of the various organs that had been submitted to the sea-bed Committee and were now before the Conference envisaged that the new organization would have at least four principal organs: a plenary organ composed of all States parties to the constituent instrument, an executive organ with restricted membership, an operational organ, and a secretariat. There were different views on the powers and functions to be assigned to the plenary organ or assembly and the executive organ which could tentatively be called the council. Those different views were reflected in the alternative formulations of articles 34 and 36 and referred basically to the location of executive power. The composition of the council was another basic problem that the Committee must consider. If the council could be constituted in such a way as to reflect accurately the different political alignments and relative numerical strengths within the assembly, there would be no need to fear that it would be dominated by special interests acting in the name of technological or administrative efficiency. Account should also be taken, however, of the fact that those who for the time being controlled the technology and resources required for sea-bed exploitation could claim to play a special role in the executive organ. One of the most important tasks facing the Committee would be to achieve an internal balance among those different considerations in constituting the council, while keeping a balance be-

tween the powers and functions of the council on the one hand and of the assembly on the other.

13. Among the powers and functions proposed for the assembly were provisions in article 32 entitled "Safeguarding the interests and needs of mineral-producing States". That question should be given detailed consideration on the basis of the excellent study prepared by the Secretariat (A/CONF.62/25).

14. With regard to the very important question of a system for settling disputes between member States, between a State and the organization, between the organization and an entity engaged in operations on the sea-bed, between one or more such entities and between a State and any such entity which was not its national, it was clear that agreement on a system for settling disputes of a technical or legal nature would greatly facilitate negotiations. Regardless of whether one supported the idea of permanent tribunal or some other formula, it would be worth-while making an effort to reach agreement on that point.

15. Mr. LOOMES (Australia) agreed with the Chairman and others who had spoken at the previous meeting that it was essential that States wishing to do so and particularly States that had not been members of the preparatory committee, should have the opportunity of explaining their views on the matters before the Committee. At the same time his delegation hoped that the discussion would be directed in the main towards identifying the important problems confronting the Committee and setting forth opinions as to their solution so as to create a basis for transition into a subsequent phase in which the different views could be narrowed and reconciled. Accordingly the Australian delegation now proposed to discuss its attitude to the structure of the International Sea-Bed Authority.

16. It was a widely shared view that the Authority should consist of an assembly, a council, an operating arm and a secretariat, together with a mechanism for settling disputes. The powers and functions of those organs should be set out clearly in the proposed convention which must also include certain rules and regulations relating to the exploration and exploitation of the area. Those were the Committee's priority tasks, and they would remain essential whether operations were undertaken directly by the Authority, on a joint enterprise basis, through service arrangements, by licensing or by any of the variations which might be agreed upon.

17. His delegation would prefer a system in which the functions of each of the major organs were defined and their interrelationship established in a convention. Above all, the Authority must be so constituted and organized as to function effectively unhampered by unnecessary institutional constraints.

18. The assembly should be a universal body comprising representatives of all States parties to the convention, in which each State had one vote. It should have the right to discuss any matter within the scope of the articles relating to the régime and to the machinery and organs thereof. It could also have the following specific functions, which were not necessarily exhaustive, to be exercised on the recommendation of the council: to appoint a secretary-general; to adopt the financial regulations and budget; to fix contributions to the administrative budget; to approve major arrangements in regard to exploration and exploitation; and to adopt rules for the equitable sharing of benefits.

19. The council should be responsible for formulating the policies of the Authority, and should recommend them to the assembly. It should also have a duty of supervision in order to ensure that the provisions set out in the convention concerning exploration and exploitation and related matters were followed. The composition of the council should adequately reflect the preoccupations of all interest groups among parties to the convention. Although his delegation still had an open mind on that point, it was attracted to the formula presented

the previous year to the effect that the council should have about 36 members, of whom an agreed number would be elected by the assembly and the rest would become members on the basis of various criteria, so as to include, for example, some representatives from technologically advanced States, some from coastal States and some from land-locked States, with due regard to the principle of equitable geographical distribution.

20. The Australian delegation considered that the operating arm would be central and critical to the effective functioning of the Authority as a whole. The challenge was to gain widespread agreement to the provisions regulating the exploration of the area and the exploitation of its resources, the conditions under which those provisions would be applied, and above all the machinery for making and administering the vitally important decisions under those headings. Basic differences of view had become apparent during the preparatory work for the conference. If progress were to be made, those differences had to be discussed and understood and then defined and resolved. That was a priority task for the Committee. The leader of the Australian delegation had set out his country's approach to that question in his statement to the 25th plenary meeting of the Conference, in which he had said that the agency should not merely be a regulatory or licensing authority, but should be empowered to enter into other contractual arrangements with States and also to undertake exploration and exploitation on its own behalf when it had accumulated the necessary resources and experience.

21. His delegation believed that it was essential to develop a system sufficiently flexible to permit adaptation in the face of developing technology, so that an effective Sea-Bed Authority of the 1970s would remain so in the 1980s and beyond. The approach that Australia had put forward in the plenary would serve the Authority, and the nations of the world, having regard to all the interests involved. Furthermore, the necessary flexibility could be built into the system by providing the Authority, within the terms of the convention, with the necessary power to adapt its methods of operation in the light of changing circumstances.

22. To attain that objective, it would be necessary to discuss the issues and formulate provisions consistent with the principle of the common heritage of mankind, which would ensure that the following guidelines were reflected: first, efficiency of operation; secondly, security of investment following the negotiation of operating agreements; thirdly, rational management so as to ensure an appropriate flow to world markets of commodities from the deep sea-bed, having regard to the need to avoid global over-supply and also to the need to provide a reasonable return for operators, including land-based producers; and finally that such supplies should be made available at reasonable prices to as wide a range of consumer countries and peoples as possible.

23. His delegation envisaged that the Authority would be able to enter into a variety of contract arrangements, depending on its own advancing level of experience, on the resources available to it and on the requirements of a particular situation. It should, for example, have the power to decide whether any particular contract arrangement was preferable in regard to a particular area. For example, the Authority might determine that the area in question should be exploited under a licence, and in its early years, while it was developing its own operating capacity, that might be an appropriate way to proceed.

24. In order to cover adequately the various issues raised by the proposals for the operating arm, the Committee should discuss in more detail such matters as criteria for opening areas to exploitation, the size and number of areas, the selection of operators, the conditions applying to joint ventures and other forms of arrangement (such as duration, programme of work, financial arrangements, reporting requirements, transfer of technology, participation of representatives of the Authority,

the formulation of safety and environment protection arrangements).

25. It had been proposed that when the operating body had acquired sufficient earned income and experience it should be able to exercise a right, subject to the approval of the council, to explore and exploit on its own behalf. The high cost of the technology required for deep sea-bed mining would probably rule out direct exploration and exploitation by the Authority at the beginning.

26. His delegation believed that those questions should be central to the Committee's discussions and that it was desirable to start debating them as soon as possible in the interest of reaching agreement.

27. Mr. DE SOTO (Peru) was gratified that Mr. Engo would be Chairman of the Committee and that Mr. Pinto was to chair the informal meetings. His delegation entirely approved the organization of work suggested by the Chairman and adopted by the Committee at its previous meeting. The decision to have the informal meetings undertake a second reading of the documents of the working group of Sub-Committee I of the sea-bed Committee was particularly welcome since it would enable delegations which had not taken part in the Committee to become familiar with the technique used, and put some order into overlapping or repetitious texts. Existing divergencies should, if possible, be narrowed down but the Peruvian delegation did not think that the Committee should spend too much time on that matter, for it might thus risk repeating the previous year's mistake of covering too many questions without getting to the root of the basic problems.

28. The Committee should, following a quick third reading of the texts proposed by the preparatory committee, concentrate on solving the basic differences concerning the régime for the sea-bed beyond the limits of national jurisdiction. Those differences concerned the régime governing activities in the area, and the legal nature of the régime; they related essentially to the question who should exploit the international area, which was the first question that the Committee must try to answer.

29. In that connexion he stressed that his country was in favour of the creation of an International Authority responsible solely for exploitation of the resources of the international area. That was the position set forth by 13 Latin American delegations, including that of Peru, in working paper A/AC.138/49¹ submitted to the preparatory committee in 1971. That position had later been taken up in the preparatory committee by the African and Asian countries.

30. At the other extreme was the position of various industrialized countries which with varying shades of difference were in favour of exploitation of the international area by a system of licences granted without discrimination to national or transnational firms, or to States. A variation of that method was to grant States exploitation licences for specific zones.

31. His delegation realized that the industrialized countries, many of which had firms capable of carrying out exploration and exploitation in the near future, were anxious to facilitate access to the area for those firms, but it did not consider that that would faithfully reflect the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction² in the proposed convention: indeed his delegation had made it clear that a system of licences would not allow for the joint management which was the essential and perhaps revolutionary aspect of the common heritage. Moreover, the work of the sea-bed Committee in 1973 had shown that there was no prospect of such a system being adopted, since a large majority of States were opposed to it.

32. Towards the end of the last session of the preparatory committee, however, a new trend had emerged on the part of certain industrialized States, in favour of maintaining a system of licences but accepting in principle that the Authority could carry out direct exploration and exploitation in the area in association or through contracts with other legal entities. Public or private enterprises could thus operate in the area in two ways: under licence or under contract with the Authority. That was merely an ingenious method of ensuring access to the area for firms, while giving superficial satisfaction to the developing countries which favoured an operational and representative Authority with the necessary means of control over the area.

33. His delegation did not believe that such a proposal, which had been submitted as a compromise, really was a compromise between two extreme positions. The Authority would obviously not survive competition from a system of licences. Furthermore, that solution would be contrary to Peru's position of principle, based on the Declaration of Principles, and would also be impracticable.

34. The industrialized Powers' difficulty in accepting an operational Authority was due to the fact that it would mean an end to the existing international division of labour between developing and developed countries. The main overt objection to an operational Authority was that it would need vast funds and technical means which were beyond its scope. That would be so if those who possessed the funds and techniques—the industrialized countries—failed to place them at the disposal of the Authority. For that very reason the developing countries would be willing, without giving up their ideals, to allow bodies possessing capital and techniques to participate in the sea-bed activities until such time as the Authority could assume direct responsibility for such activities. The Authority's contribution to such a co-operative undertaking would be the area's resources which it possessed in the name of all mankind. The Authority should, however, control operations under appropriate contracts with the participating bodies. His delegation would accept their participation only on that condition.

35. There were other questions inextricably linked with the fundamental problem of the nature of the Authority, such as the division of power between the Authority's organs. His delegation considered that power should derive essentially from the plenary body, the assembly, in which all members would be represented. The executive body should be subordinate to the assembly. The Authority should include an operating body, to be called the enterprise, which would be responsible for technical liaison with the participating bodies and for carrying out activities in the area itself. Other essential questions were the voting system and the composition of the subsidiary bodies and the executive body which could be called the council. His delegation would definitely prefer a purely democratic system. Any method deriving from the Yalta agreements, which would give preponderance to certain powerful or rich countries, would simply be incompatible with the Declaration of Principles.

36. His delegation had not touched on the question of the economic implications of exploiting the mineral resources of the sea-bed because it was waiting for a representative of the United Nations Conference on Trade and Development to present the relevant documents prepared by that organization.

37. Mr. CROSBY (Canada) said that his delegation wished to renew its commitment to a strong International Authority which could ensure that all questions concerning the resources of the area were resolved in the universal interest, since they were part of the common heritage of all mankind.

38. With respect to the type of body within the Authority that would undertake decisions on exploitable mineral resources, despite differences that seemed more apparent than real one gathered that there was a consensus in favour of a body which would enter into contracts with competent entities, on behalf of the Authority, for the exploration and development of the

¹ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21, annex I, sect. 8.*

² General Assembly resolution 2749 (XXV).

resources of the area, especially since the Authority would not be in a position to act on its own at the outset.

39. Whether the contracts were called permits, licences, agreements or joint ventures, it was the substantive content that was important, and there would appear to be various interpretations concerning the definition of such terms.

40. The general expectation would seem to be that at an early stage, some benefits should flow to the Authority from whatever activities might be undertaken. The cash flow would probably be relatively limited at first, but would eventually constitute an appreciable source of revenue for the development of the area. On the other hand, operators also would need assurance of a reasonable return on their investments, without which it would be difficult to envisage ventures being undertaken under the auspices of the Authority.

41. One of the primary problems in that respect was the nature of the legal contracts between the Authority and the operators. However, seeing that it would be difficult at the present stage to foresee all possibilities concerning contractual arrangements, the important point for the present was an assurance that contracts would in fact be arranged.

42. There was one field, however, in which regulatory requirements could be tackled straight away, and that was the supervision and control of the actual exploration and development activities. All bodies carrying out activities in the area should be subject to the same regulations designed to ensure the safety of personnel, the prevention of pollution and the optimum recovery of resources. That kind of control would require a highly effective body with a limited number of skilled personnel, but able to call on the services of consultants, thus avoiding the need for a large bureaucratic structure.

43. Regarding the fundamental problem of access to the international area for the purpose of carrying out exploration and development, without claiming to have all the answers, he thought it would be desirable from the point of view of resource management for the Authority to reserve portions of the area, including a proportion of the areas made available to developers under contractual arrangements, part of which would be returned to the Authority when the production stage was reached. The Authority could then hold that part in reserve or use it. It would thus be possible to prevent monopolization of the richest sectors and ensure that later participants had an opportunity for access to those sectors. It would also be possible to envisage working or financing requirements which would help to exclude parties interested only in speculation.

44. A further primary problem involved the production of minerals. Canada, which was first in world nickel production and third in world copper production, felt that it was difficult to envisage completely unregulated production: even if worldwide effects were minimal, it would be of small comfort for those countries most affected.

45. Mr. ILLANES (Chile) noted that the world had come a long way since the discovery, only recently, that an immense area of the globe was as yet unexploited. The work undertaken had led to the preparation of the Declaration of Principles, which designated the sea-bed and ocean floor beyond the limits of national jurisdiction as the common heritage of mankind and referred to the need to establish an international régime, including an international machinery or Authority, which it was now the task of the Conference to establish by means of a convention.

46. The concept of a "common heritage" would serve as the corner-stone of the international régime and machinery. The importance of the Declaration of Principles was both political and legal: it was political because the Declaration constituted a decision adopted by consensus by the international community, and legal because it would have major consequences for international law. The main implications of those principles were therefore apparent, and the time had come to elaborate

them and translate them into an international régime and machinery.

47. One consequence was that any exploitation of the area must be prohibited until the international régime had been established. Another was that the exploitation of the mineral resources must not harm the interests of the developing countries, which were themselves mineral producers and exporters.

48. In the sea-bed Committee, Chile's delegation had frequently stated its views on the form which the Declaration of Principles gave to the nature of the future international régime and of the body that would have the responsibility of applying it: first, the convention must be universal; it must be based on the Declaration of Principles, and must reflect the concept whereby the area and its resources were part of the common heritage of mankind; it must establish an international régime that was in keeping with the Declaration of Principles and an international machinery with powers adequate to ensure the application of the régime; secondly, the régime must be applied to the area of the sea-bed and the ocean floor beyond the limits of national jurisdiction, and to the subsoil and resources thereof, whether mineral or living resources, or minerals existing in solution in the water column; thirdly, the régime and the machinery—which would represent the interests of mankind, as the proprietor—should exercise not sovereignty but jurisdiction over the area and its resources; the machinery should therefore control all economic and related activities in the area and regulate the process of exploration and exploitation of the sea-bed and its resources, the process of separation and concentration, and even the marketing of the minerals; it should also combat pollution and regulate scientific research. The essential aim was to ensure that the resources of the sea benefited equitably the whole of mankind; fourthly, Chile took the view that, in order to achieve that aim, the International Authority entrusted with administering the régime should have flexibility and very wide powers, in order to be able to take action, to manage, to exercise control and to adapt itself to circumstances.

49. The draft submitted by the Latin American countries in document A/AC.138/49, which in general corresponded to the African texts and to the definition submitted by the Group of 77 and presented at the 25th plenary meeting by the representative of Kenya, provided for an Authority of that kind, entrusted with controlling exploration and exploitation, and empowered to undertake direct exploration to control both the whole process of marketing and the arrangements for the distribution of profits, to combat pollution and to control scientific research within the area. The Authority would also be entrusted with distributing the profits, preserving the marine environment, promoting the development of the area, and undertaking planning and the transfer of science and technology. The Latin American text also provided for an "enterprise" that would itself be empowered to exploit the area or to call on other enterprises or establish joint companies to exploit the resources.

50. His country considered that such a system would enable the States concerned to participate in the various activities and would at the same time ensure effective control over the whole economic process. Under the licensing system recommended by certain delegations, there would be a risk of departing from the objectives of the Declaration of Principles by making it possible for the best part of the area and its resources to fall very quickly under the control of large consortia which would not represent the interests of the developing countries.

51. It was important that the future Authority should be democratic and represent the international community equitably. To that end, the Latin American text provided for an assembly and a council without privileged members.

52. His delegation felt, furthermore, that it was very important that the convention provisions should be clear; otherwise

the exploitation of the minerals of the area would be prejudicial to the developing countries which extracted those same raw materials from the earth and depended upon the export revenue which they yielded. The General Assembly and the United Nations Conference on Trade and Development had already stated their views on that point, and it was essential to establish guidelines to ensure that such cases did not occur. The criterion of the "complimentarity approach" to which the Secretary-General referred in his report (A/CONF.62/25) could be useful in tackling that question.

53. His delegation reserved its right to state its views in greater detail on that point at the appropriate stage, and wished only to add that the draft convention which had been considered and revised in second reading by the working group clearly reflected the main problems to be solved. The first concerned the powers of the Authority, which the developing countries—as well as scientists, intellectuals and various bodies that had studied the question—felt should be broad, under a strong régime.

54. In connexion with those powers, the question arose as to who would exploit the area and how it would be exploited: the developing countries had replied that they wished the Authority itself to assume responsibility for exploitation, either directly or by some other means to be determined by the Authority itself, but still under its control; and they had declared themselves to be in favour of the "enterprise" to which he had referred. At the same time, the question had arisen as to who would control the Authority. Finally, certain delegations had sought to resolve in advance the problem of rules governing the relations between the Authority and those who would undertake the exploitation of the resources of the area—a question which should not be tackled until the fundamental problems had been settled.

55. He considered that the Conference should concentrate on approving the principal articles of each question defined by the chapter headings, for those articles provided the outline of a plan for an international political solution or "package deal".

56. Except for the problem of limits, which should be settled when the recommendations of the Second Committee were available, the part of the convention dealing with the sea-bed could be the subject of independent negotiations without the need to wait until other questions had been settled.

57. In conclusion, he recalled that the problem of the resources of the area had arisen when those possessing the economic and technical means for exploring and exploiting them had sought to protect their activities by means of a legal framework that would guarantee the security of their investments and enable them to obtain loans and insurance. They were powerful companies which had spent hundreds of millions of dollars in studies and research and were ready to undertake exploitation as soon as an international régime permitted them to do so. They were not only ready but impatient: the Conference had been given to understand that any undue delay in establishing a régime, or the establishment of a régime regarded as contrary to those interests, might lead to the illegal exploitation of the area. Nevertheless, the international community had had the wisdom to refrain from taking hasty measures detrimental to coming generations, and had worked with an eye to the future and to international solidarity, so well expressed in the concept of the common heritage of mankind. Within that framework—which was provided by the Declaration of Principles—it should be possible to fashion an instrument that would be acceptable to all; if it was not, there could be no valid solution for the developing countries.

The meeting rose at 12.35 p.m.

3rd meeting

Friday, 12 July 1974, at 11 a.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Statements on the international régime and machinery (*continued*)

1. Mr. THOMPSON FLORES (Brazil) said that the third reading of the draft articles would provide an excellent basis for the negotiations the Committee would have to engage in.
2. The main questions to be settled were those related to the powers of the Authority and those related to its structure and to the composition and powers of its various organs.
3. His delegation thought it most important that the convention should be based on the concept of the common heritage by vesting the authority with full responsibility for all activities to be undertaken in the area. That was the only way to obtain full information on all aspects of exploitation, which was essential for the responsible regulation of production, the distribution of revenues between the Authority and any exploiting enterprise and, later, among States themselves. He hoped that all members of the Committee would be prepared to recognize the Authority as the juridical body entrusted with the responsibility of administering the area and utilizing its resources.
4. It would then be necessary to state some of the conditions under which contracts for exploration and exploitation or association with natural or juridical persons would be concluded. Those conditions should ensure a reasonable tenure and return on investments made, and should also provide for rational management of the resources with a view to: avoiding adverse

consequences of the exploitation of sea-bed minerals on the economies of countries with land-based production of the same minerals, without resorting to a system of compensation which his delegation felt was inappropriate, ensuring an effective transfer of technology to developing countries enabling developing countries to participate in exploitation in the future and safeguarding the area against pollution from activities in the sea-bed.

5. Although the Authority should be given the necessary powers to enable it to explore and exploit the area itself, it was clear that, at least in the beginning, it would have to call on companies or consortia which had the financial resources and technological expertise to undertake those activities. Under those circumstances, the Authority's contribution to any joint venture would be the capital, in the form of the resources themselves, and its role would be to control directly, and to participate in, all activities, including exploitation.

6. The intention would not be to place any unreasonable difficulty in the way of those who were ready to operate in the area, but to ensure that mankind as a whole would benefit. That was why, in his opinion, no veto system could be accepted in any organ of the machinery.

7. Mr. FIGUERO (Venezuela) recalled that his country had been a member of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of Na-

tional Jurisdiction since 1971 and had participated in the discussions, negotiations and search for solutions that reflected the concern of a number of developing countries over the expansion of a new sector of industrial activity based on the use of modern technology. As such technology was often very expensive, it was beyond the scope of most developing countries. Measures should therefore be taken to deal with that situation, for otherwise the objectives of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction¹ would never be attained.

8. That was why Venezuela and 12 other Latin American countries had, in their joint working paper A/AC.138/49,² stressed the fact that the area could never be subject to appropriation and that exploitation of its resources should be planned rationally, with special regard to possible consequences for the exports of developing countries. Subsequently, in a draft declaration (A/AC.138/L.11/Rev.1)³ submitted by several countries from the Group of 77, Venezuela had reaffirmed the same principles for the benefit of certain large industrial enterprises which, disregarding the fact that the area was a common heritage, were trying to begin exploiting the resources immediately simply because they had the technological resources to do it and the unilateral permission of the State of which they were nationals.

9. His delegation was well aware of the difficulty of establishing a new international régime for the rational exploitation of the resources of such a large area. In addition, some way must also be found to close the gap between rich and poor countries, if it was not to be proved once again that it was impossible, at the economic level as at the political level, to involve the developing countries in building a new international order based on economic and social justice. He was sure, however, that there was a large area of agreement, and he hoped that efforts would be redoubled to establish principles based on the widest possible agreement.

10. Turning to various aspects of questions the Committee would have to consider, he said, that since the fact had been accepted that the area was the common heritage of mankind, efforts should now be made to take a global approach to international ocean space and to keep a balance between the various uses the international community might envisage for it; formulae should be found to reconcile the traditional uses of the high seas with the new concepts of co-operation between all nations. It was difficult to conceive of an innovative régime for the seabed while the régime of the superjacent waters based on outdated rules and national egoism was retained; that was why the Authority should have the necessary powers to ensure the conservation of the marine environment and of its biological resources.

11. The document presented by the 13 Latin American countries proposed the fundamental principles which would govern the activities of an Authority and give it wide enough powers to play an important part in the new field of international co-operation, particularly by authorizing direct exploitation of the resources of the area, and by giving it wide powers to intervene to prevent conflict or unfair competition between those who had the technological resources and those whose only hope for the future was a more equitable international society.

12. He stressed that the machinery to be created must be democratic and representative enough to ensure that the solutions it found would not favour a small group. The Authority should find ways of managing the exploitation of the interna-

tional area which would be acceptable to all and in which all would participate, under joint control and for the benefit of all; that basic objective could be attained only through some international public enterprise.

13. Mr. THOMAS (Trinidad and Tobago), after congratulating the Chairman on his election and Mr. Pinto on having been chosen to guide the informal meetings of the Committee, said that his delegation fully endorsed the programme of work proposed by the Chairman. His delegation considered that the time had come for the First Committee to confront the focal issues before it.

14. The fundamental issue before the Committee was the question of who should explore and exploit the international sea-bed area beyond the limits of national jurisdiction; the successful resolution of that issue would provide the basis for resolving all other issues pertaining to the international régime and machinery. To grasp fully the thrust of that question, it should be placed in its proper perspective by a consideration of how the international area could be explored and exploited in the interest of the international community whose heritage it was; and from that consideration would logically follow the question of who might explore and exploit the area. There were two conceptual approaches to that issue: the first envisaged a strong International Authority with comprehensive powers, which would govern and control the area and would by itself or in association with others, ensure the exploration of the area and the exploitation of its resources in the interest of the international community; the second provided for an intergovernmental organization with administrative status through which States and private enterprises could explore and exploit under contractual arrangements.

15. The draft submitted by 13 Latin American countries (A/AC.138/49), which the Trinidad and Tobago delegation had introduced in the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction at Geneva in 1971, embodied the first approach and was currently receiving increasing support from a majority of developing countries. That approach sought to keep control over all activities undertaken in the international area and over all benefits from the area in the interest of the international community; that did not, however, exclude outside co-operation with the Authority. The other approach provided for a relinquishing of control by the international community to States or private entities, thus subordinating common benefit to private interests. It would be very difficult to reconcile the implementation of a common heritage with profits—derived from that heritage—accruing to a small number of States and private entities. The main difference between the two approaches was the consideration of the locus of control and the extent of control for all activities deriving from the exploration and exploitation of the international area.

16. It had been said at a previous meeting that the international régime should contain certain safeguards. First, there should be no discrimination against any Member State in terms of the benefits derived from the exploration and exploitation of the area. Secondly, there should be no individual State sovereignty over the area or part of the area. Thirdly, all States should have the same rights of exploration and exploitation. Fourthly, the interests of developing countries should be taken into account in the exploration and exploitation of the area. Fifthly, no State or group of States should derive one-sided advantages from the benefits of the international area. His delegation considered those conditions indispensable to the implementation of the principle of a common heritage and felt that the fifth condition should apply to private entities and institutions whose advanced technology had always worked to the advantage of developed countries. In fact, the United Nations, in its resolutions on the question, and especially in resolution 2749 (XXV), had recognized the need to take special account of the interest of developing countries. In the light of

¹ General Assembly resolution 2749 (XXV).

² *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21, annex I, sect. 8.*

³ *Ibid.*, Twenty-seventh Session, Supplement No. 21 and corrigendum, annex I, sect. 1.

the technological advantages of certain States, the implementation of those safeguards and conditions would be difficult to guarantee without control by an International Authority. It was perhaps in those very safeguards and conditions that the fundamental differences could be resolved. Any régime providing the necessary safeguards to subordinate the interests of individual States, groups of States, private entities and institutions to the interests of the international community would be consistent with the concept of the common heritage.

17. He suggested that the Committee should shift its perspective to a consideration of those fundamental safeguards and conditions in an attempt to resolve the question of who should exploit the international sea-bed area. He proposed that delegations holding divergent views should meet and try to find common ground, basing their discussions on those fundamental safeguards which would preserve the principle of the common heritage. The proponents of a particular system would then indicate how they thought their system would provide such safeguards.

18. He thought that two other questions would gain increasing importance in the course of the Committee's discussions: first, the structure of the International Authority, in so far as the composition and status of its principal organs were concerned, and secondly, the over-all structure of the Authority. The former question had already been studied in depth, so he would limit himself to a few comments on the latter.

19. Certain delegations were in favour of an institutional structure parallel to that of the United Nations. That did not seem a wise course, since the International Authority would be concerned not merely with the administration of the area but also with commercial activities, and its structure should therefore be adapted to that aim. Moreover, the concept of such an Authority was novel and therefore offered a challenge for new initiatives. Lastly, it offered to developing countries, for the first time, an opportunity to contribute fully to the creation of an organization which would be most likely to promote their own economic interests and those of future generations. Undue imitation of the United Nations system would not fully achieve that goal, and furthermore there was the risk of perpetuating the defects of the United Nations system, which was not designed to promote the type of comprehensive economic undertaking that the International Sea-Bed Authority promised.

20. He expressed concern with respect to three proposals by certain delegations—the implied veto in the council's operations, weighted voting, and considerations of geographic size and population of countries in determining their political strength in the organization. Such manoeuvres were essentially political and should find no place in the genuine pursuit of the economic development of developing countries; they might conceivably even do violence to the implementation of the common heritage. To entrust the management of the common heritage to developed countries, however benevolent, was illogical and unjust and was merely a perpetuation of the United Nations system with all its inherent defects, a return, indeed, to the *status quo*.

21. The CHAIRMAN said he proposed to call on the representative of the International Ocean Institute and, if there were no objections, he would consider that the Committee accepted that proposal.

It was so decided.

22. Mrs. MANN BORGESE (International Ocean Institute) said that the non-governmental organization which she represented had been established two years previously in co-operation with the Royal University of Malta and the United Nations Development Programme. It was governed by an international Board of Trustees, whose Chairman was Mr.

Amerasinghe of Sri Lanka. The Institute's work was conducted by an international planning council, a number of whose members were present as delegates to the Law of the Sea Conference. Their work had been strongly influenced by the concept of the ecological unity of the world ocean system, the implications of technological advance and the growing interactions of all uses of ocean space and the exploitation of its resources. The Institute was convinced of the need for a new and systematic approach to ocean affairs.

23. Having regard to the Institute's experience, to General Assembly resolution 2749 (XXV) and the Committee's terms of reference, she wished to stress the need to create not merely an Authority which would be occupied purely with the sea-bed but an organization which would concern itself with ocean space in general. As the Conference appeared to be moving towards a consensus in favour of the creation of an economic zone or patrimonial sea, the question of the International Sea-Bed Authority should be approached from a different angle, as the common heritage of mankind was not the same as it had been in 1970, when the Declaration of Principles had been adopted. At that time it comprised more than three quarters of ocean space and constituted a very considerable economic potential which would have enabled the poorer nations to derive significant financial benefits from operations in the international zone. The size and resources of the area would also have made possible effective international measures for the control of marine pollution, and for independent research leading to effective scientific and technological transfers. The Sea-Bed Authority now envisaged was entirely different; to some delegations it seemed that its single function, at least for the next few decades, was the mining of manganese nodules. Further, not more than half-a-dozen countries and scarcely more than a dozen companies had the capability to engage in nodule mining, the revenue from which might be expected to vary between 50 and 200 million dollars a year, a revenue not much larger than would be required to cover the operating costs of the future authority, and certainly insufficient to effect any significant distribution of financial benefits. Consequently, the Conference should not envisage complex and costly machinery, in the operation of which the developing countries would have very little to say, and which would be incapable of fulfilling effectively the functions of scientific and technological transfer which were desired by many countries; in other words the Sea-Bed Authority which they were discussing could in no way embody the principles adopted in 1970, and would be incapable of filling the jurisdictional and managerial vacuum in the law of the sea.

24. However, there was no cause for pessimism or for any departure from the Declaration of Principles. If the International Authority governing the area beyond the limits of the economic zone was to be economically viable, if it was to be useful to the international community, if the developing nations were to have their share in decision-taking and receive their share of the financial benefits, they must pass from the concept of a single-purpose sea-bed régime to that of a multi-purpose ocean-space régime and machinery. There were further reasons why the extension of the concept of a sea-bed régime was the logical and inevitable consequence of the adoption of the concept of the economic zone. In the technologically more advanced countries new forms of coastal management were evolving in order to co-ordinate and harmonize all uses of national ocean space, to integrate ocean-based ecology and economy with land-based ecology and economy, thus creating new forms of co-operation between local, regional and national government and between scientific, industrial and administrative organs. It would seem meaningless that such a "coastal management" should be confronted with an array of fragmented organizations and competences in international ocean space. The two sectors, national and international, would not integrate. Sectoral and overlapping competences, as well as

competence gaps, would render the international sector totally ineffective.

25. The extension of the concept of a common heritage of the sea-bed to one of ocean space did not mean that the preparatory work had been wasted, as all provisions adopted and agreements reached could be incorporated in a wider framework.

26. She would deal on a future occasion with the question of the structure of the organization and the functions it should have to enable it to interlink effectively with the coastal management system regulating the interaction of all uses of national ocean space and resources.

The meeting rose at 12 noon.

4th meeting

Monday, 15 July 1974, at 10.45 a.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Statements on the international régime and machinery (*continued*)

1. Mr. SUGIHARA (Japan) stated that the Committee had to find solutions to three essential questions: how to derive the greatest possible benefit from the common heritage in the interest of all mankind, how to ensure the equitable participation of all countries in those benefits, and how to carry out operational activities.

2. It followed from the notion of the common heritage that the resources of the sea-bed should be exploited in the most efficient and profitable manner possible. For that reason, the international organization which would be created should grant licences to contracting States which, in turn, would authorize physical or juridical persons, irrespective of their nationalities, to explore and exploit mineral resources in that part of the sea-bed area specified by the licences. Such a licensing system would make full use of the efficiency which characterized private entities and would be free of the disadvantages inherent in the bureaucracy that would develop if the exploitation were carried out directly or indirectly by an international organization. Moreover, in terms of the organization's budget, that system would be satisfactory. The choice of a system which granted the proposed enterprise exclusive exploitation rights would inevitably entail setting up a costly organization, which would make the programme less profitable and would not serve the best interests of the international community as a whole.

3. To derive the maximum benefit from the common heritage of mankind its resources must also be protected, since they could be exploited over a longer period of time if that activity were carried out in a rational manner. For that purpose the international area could be subdivided into equal areas like the squares of a chessboard. Thus the areas which seemed to be most profitable would not be the only ones to be exploited.

4. All those measures would be of no avail if the benefits, financial or otherwise, derived from the exploitation of the sea-bed were to be monopolized by one State or a small number of States or private entities. The Japanese delegation agreed with the proposal that the revenues obtained from exploiting mineral resources should be equitably distributed among the developing countries, taking into account in particular the needs of land-locked and other geographically disadvantaged States. All States should participate in exploitation activities, for the technical and managerial competence thus acquired would be a great asset for the economic development of all interested States.

5. The alternative of an enterprise having a monopoly on exploitation, run by experts from the developed countries, would not be conducive to that kind of situation. Individual States would be able to acquire the necessary competences only

by engaging in exploitation activities either directly or in association with the technologically advanced States or companies from those States. A State would be authorized to request only a limited number of licences over a specified period of time.

6. The Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction had devoted itself to the working out of provisions relative to the régime applicable to the sea-bed beyond the limits of national jurisdiction, the powers and functions of the international organization and the composition of the respective organs. For those provisions to be put into effect, supplementary principles were needed relating, for example, to the areas to be exploited, the duration of the licences or contractual arrangement which would be entered into with the international organization, the phases of exploration and exploitation activities, and the kinds of payments to be made to the organization. Those questions remained essential no matter what system of exploitation was adopted. The Conference had to lay down, at the least, the fundamental principles regarding the actual conduct of exploration and exploitation activities.

7. There still remained a number of problems to be solved, such as determining the limits of the international area, but the committee should not perhaps proceed to an examination of that item until the Second Committee had reached a conclusion on the matter.

8. With regard to the variants and bracketed texts to be eliminated from the report of Sub-Committee I of the sea-bed Committee, some of them had been proposed for over-cautious tactical reasons and should be eliminated from the very start of the informal meetings; nevertheless, it would not be possible to deal with every case in the same way since a great many questions still required more precise definition.

9. Mr. D'STEFANO PISSANI (Cuba) stated that the adoption of legal rules relating to the international régime and machinery which, in the final analysis, depended on economic, political, social, scientific, technical and other factors, posed a number of problems.

10. One problem concerned the close link between economic and social progress and the goal to be pursued, namely, that the resources which would be obtained from the sea-bed would serve all mankind and, in particular, those nations that were still under-developed. The resources of the area would not, however, cure all ills of under-development. They might, on the contrary, provoke new ills if appropriate measures for the distribution of resources were not taken.

11. A second problem arose out of the fact that any consideration of the area had to take into account its increasing uses. The sea, which until recently had been used only for communications and fishing, now offered an immense variety of possibilities for exploitation of the sea-bed, with all its possible conse-

quences. Exploitation of the sea-bed, however, did not conflict in any way with the legal régime of the superjacent waters. In that connexion, it was appropriate to emphasize the accelerated development of numerous aspects of international relations. Despite the principle of the freedom of the seas, an economic and maritime blockade had been imposed upon Cuba by a powerful neighbour, and it was easy to imagine the consequences of the adoption of international navigation restrictions by the imperialists.

12. The Cuban delegation, without attempting to examine all of the elements of the international régime which it would discuss in more specific terms on another occasion, wished to underline the following points which deserved priority treatment.

13. First, the principle according to which the area and its resources were the common heritage of mankind was inextricably bound up with the question of how and by whom the exploitation of those resources and other related activities in the zone should be carried out, and with the question of the adverse effects that such exploitation might have on the price of minerals coming essentially from developing countries.

14. The Cuban delegation began with the premise that the International Authority should have the exclusive right to exploit the area either directly or through the intermediary of an enterprise, irrespective of the fact there might be need during the initial stage for the assistance of developed countries. A licensing system would be incompatible with the notion of the common heritage since it would leave the area to the mercy of companies whose methods were only too well known.

15. As the head of the Cuban delegation had said in his general statement at the 29th plenary meeting, the principle of sovereignty was not sufficient to guarantee that the exploitation of resources in the economic zones of States would be carried out to the benefit of their respective peoples, since there were governments which, in exercise of their sovereignty, might concede the exploitation of mineral resources in their economic zone to multinational companies. The principal beneficiaries in such a case would be those companies themselves and not the peoples of the States involved. The same would hold true for the resources of the sea-bed if the multinational companies which were already pillaging the wealth and exploiting the labour of so many peoples were given access to those resources, but a rigorous system of control enforced by the International Authority could allow States to make technical and financial contributions during the first stage until the Authority itself would have the means to exploit the area directly. The initial contribution of the developing countries would be the resources themselves of the area.

16. Some companies with the necessary funds and technology already claimed, however, to have begun exploiting the resources of the area on the mere basis of a State's authorization. Until the legal rules relating to the area were defined and enforced, it should be clearly understood that no State or entity could exploit the resources of the area and that the moratorium provided for in General Assembly resolutions 2754 D (XXIV) and 2749 (XXV) should be observed, the régime applicable to the area in the meantime being the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction.

17. As regards the economic impact of exploiting the resources of the area it was certain that those resources were considerable, that exploitation of them would become increasingly feasible and economic and would have an impact on the raw materials market, and that it would be difficult to compensate developing countries which were producers of land-based minerals. It was apparent from document TD/B/449, prepared by the United Nations Conference on Trade and Development, that the principal world producers and exporters of cobalt, including Cuba, would be seriously affected by the exploitation

of the sea-bed and that by 1980 those countries would lose some 50 per cent of the gross export earnings on which they could have counted had there been no submarine exploitation. UNCTAD also indicated that compensation for the countries concerned would be ineffective, thereby justifying the adoption of preventive measures to control the production, marketing and selling-price of cobalt.

18. The Conference had been convened at a time when the natural resources of *terra firma* had begun to be depleted. Only recently had people become aware of the finite character of land resources, the depletion of which was due to multinational companies and the consumer societies to which they belonged and was carried out at the expense of the developing countries. Marine resources must be treated differently.

19. The second basic element he wished to stress was the absolute necessity of regarding the international area as a zone of peace, since it was not possible to conceive of a sea-bed régime over an area that was not exclusively reserved for peaceful purposes.

20. In the third place, international co-operation should be encouraged in the field of scientific research, which must be linked to the development of skills of the nationals of developing countries from every point of view; the same applied to the transfer of technology, together with appropriate training activities, in the field of marine science and technology.

21. In the fourth place, a universal approach was indispensable for the protection of the marine environment. If the need for an international body of rules concerning pollution was agreed upon, such rules must not hamper the development of the economically backward countries. There was no need to state which countries were primarily responsible for pollution.

22. In the fifth place, with regard to differences of opinion in the matter of the settlement of any disputes that might arise in the area, the working group of Sub-Committee I of the sea-bed Committee had completed a second reading of the relevant draft article, and it had been decided to reconsider the subject at a later stage. His delegation believed that the time was ripe to go ahead and to consider the establishment of an *ad hoc* tribunal, the competence of which must be defined in view of the complexity and multiplicity of the legal aspects of the international régime and machinery.

23. The régime was linked to the machinery that would ensure its observance. If it was agreed that there should be an international authority empowered to undertake, under its effective control, all activities relating to the exploration of the area and the exploitation of its resources, having regard to the economic and ecological impact of that exploitation, equal rights must be granted, to all States, without establishing special categories, on a basis of universality that was lacking at the Conference owing to the absence of representatives of the Provisional Revolutionary Government of the Republic of South Viet-Nam and of the Royal Government of National Union of Cambodia. The African, Palestinian and Puerto Rican liberation movements should also be represented in the International Authority, at least in an observer capacity.

24. The Authority should consist of an assembly with the ultimate power of decision, a representative council and a secretariat. One of the functions of the assembly would be to consider the establishment of any necessary subsidiary bodies.

25. The Committee was in the throes of establishing a largely new legal order, but it could neither ignore nor depart from the legitimate norms which marked positive achievements in the historical development of international law. They included the principles of self-determination, independence and sovereignty, all of which must be applied to the exploitation of the wealth of peoples in the interest of peoples. It should not be forgotten that the champions of imperialism were barely concealing their support for a so-called "new structure of international law", which was actually new only in the sense that they wished to

consecrate, in a legal and ideological instrument, the acts of plunder in which imperialism was engaged and would continue to be engaged if allowed. Above all, however, as the Argentine delegation had said in the plenary body, the legal insecurity of multiple rules must be eschewed for fear of giving birth to an "ideology of plunder".

26. In conclusion he said that, since *terra firma* had experienced colonialism, plundering, pollution and war, the sea must be preserved and its peaceful utilization ensured.

27. Mr. ADENIJI (Nigeria) stressed the historical nature of the Declaration of Principles, according to which what belonged to all could not be seized by the few, but must be divided equitably among everyone. That concept of the common heritage was the cornerstone on which the edifice under construction rested, but it implied common responsibilities as well as common benefits. Nigeria would not be content with a few crumbs; it intended to take full part in administering the exploitation of the common heritage and the benefits derived therefrom.

28. According to the Declaration of Principles, the international area must be open to all States, whether coastal or landlocked, developed or developing. Yet the technology for exploiting the area was concentrated in the hands of a few States, and only those States would be able to undertake exploitation. Moreover, in the process of exploiting the area, those States might well create problems that could interfere with the subsequent use of the area by other States.

29. In order to prevent that from happening, his delegation advocated the establishment of machinery vested with sufficient authority to ensure not only the exploration and exploitation of the common heritage but also the protection of the area against harmful activities. The authority should be vested with real power so that it could protect the interests of all States, many of which were not yet in a position to explore and exploit the common wealth. The régime should ensure that adequate benefits accrued to the international community from activities in the area.

30. His delegation found it difficult to reconcile the desire expressed by certain States for an effective, widely accepted régime over that part of the ocean which the coastal States could well take care of and the reluctance displayed by the same States with regard to an effective Authority for the area of the sea-bed, which belonged to everyone. It was in everyone's interests that the régime to be established should take account not only of the realities of today but also of the possibilities of tomorrow. Only a strong régime, with powers of effective control, could meet that requirement.

31. As for the structure of the international machinery, his delegation was in favour of a democratic structure that would protect the interests of all. A consensus seemed to be emerging on the organs of the machinery. His delegation supported the creation of an assembly in which every member of the international community would be represented and have a vote. The assembly, which would control the finances of the machinery and approve its budget, would also elect members of the council. The council, with limited membership reflecting an equitable geographical distribution, would formulate policies along the lines of a board of directors of a corporation. He shared the view expressed at a previous meeting that the machinery should not be modelled on the machinery of the United Nations. In his opinion, the Authority should be managed like a commercial enterprise, encouraging and compensating those who provided the necessary technology and providing the Authority and all its members with maximum benefits. It was neither necessary nor desirable to give certain members of the council privileged positions; indeed, at a time when that situation in an important organ of the United Nations was being strongly criticized, his delegation could not be party to its perpetuation in a new international organ. It was unacceptable

that one group of States should be more favoured than other groups, and his delegation would oppose any provision for the representation of special interests. Protection of investments, which was used as a pretext to justify preferential representation within an executive organ, could be provided in specific agreements between the machinery and the interested parties.

32. As for the operational organ, his delegation felt that the time had come to relinquish the two extreme proposals, the one envisaging exclusive exploitation of the resources by the Authority, and the other advocating an Authority that would merely license others to carry out exploitation. The first of those proposals would certainly delay effective exploitation for many years, while the second would divert the benefits of exploitation to a few. The only realistic approach to the problem would be to issue licences to competent States and organizations to exploit specified areas of the sea-bed beyond the limits of national jurisdiction. From the financial benefits derived from such licences and its share of the profits of the exploitation, the Authority could accumulate enough funds to start exploitation and exploration on its own later.

33. With regard to the question of the economic consequences of the exploitation of the mineral resources of the sea-bed, he stressed that, in his opinion, the Authority should be entitled to regulate production in the international area so that the stability of the income of mineral-producing developing countries would not be jeopardized.

34. Mr. KNOKE (Federal Republic of Germany) said that what was important now was not to discuss systems that had been proposed and positions that had already been taken, but to weigh the arguments in a spirit of constructive co-operation with a view to broadening the basis for a new consensus. He would therefore elaborate the general framework within which his delegation hoped that solutions could be found.

35. The régime and the Authority would have the common function of ensuring the optimum utilization and most efficient management of the common heritage of mankind. The Authority, as the Chairman had said, would have immense political significance for the future. Consequently, the very costly development of technology and the considerable investments required should not become an open-ended burden on the régime and the Authority. The problem could best be solved by States and companies, and the Authority should grant them, for limited periods and in limited areas, licences to explore and exploit the resources of the sea-bed and ocean floor.

36. It was in the interests of all that the future convention should ensure that the desire of those who wished to start deep-sea mining should not be checked by uncertainties over their legal position. In particular, the convention should contain provisions concerning the size of fields for exploration and exploitation purposes, also for the non-discriminatory granting of exploration and exploitation rights, international protection of mining installations, the obligation to pay fees to the Authority, and some provision to ensure that the operators would make minimum annual investments and exploit efficiently the mineral resources in their sector.

37. Those activities would create many situations which could not be regulated in detail in the convention. However, the question of competence for such matters must be thoroughly clarified. That was why he felt that an assembly was indispensable. An assembly would take major decisions of principle, in particular concerning the development and modification of the régime to take account of technological developments and experience gained. A council, on the other hand, would be responsible for all decisions other than those of principle, and would take the administrative decisions. It would also seem expedient to provide for technical expertise at a level below that of the council, each organ having a clearly defined mandate so that the whole machinery would operate smoothly.

38. He envisaged the assembly of the Authority as having rules of procedure similar to those of the specialized agencies of the United Nations. The council's effectiveness would be determined largely by its composition and voting procedures. Its composition should be such as to ensure a balance between the interests of developing countries, industrialized countries, and geographically disadvantaged countries. Its rules of procedure should be drawn up in such a way as to ensure that the interests of special minorities were protected.

39. The great expanse of the ocean floor would no doubt give rise to conflicts of interests and divergences of opinion over the interpretation of the future convention; the special conditions governing the exploitation of mineral resources and the size of the investments involved would call for speedy settlements of disputes, and an organ would therefore be needed for interpreting the future convention and ascertaining legal positions. The question of whether any existing institution could serve that purpose or whether a new organ would have to be established had still to be considered, but there was in any case a manifest need for compulsory settlement of disputes.

40. In order to promote world-wide participation in the riches of the sea-bed, it was necessary first of all to ensure direct and non-discriminatory access to those resources for all States and State-sponsored companies and, secondly, to ensure revenue sharing.

41. He was convinced that even in the initial phase participation of developing countries in the exploitation of the mineral resources was politically necessary and economically desirable and possible. For example, countries could issue permits for exploitation under which they would engage in joint ventures or enter into legal arrangements with third countries or companies. For countries which did not wish to participate in those activities forthwith, the Authority could act in an advisory or intermediary capacity. It also seemed quite possible and economically feasible to set up in developing countries processing plants for sea-bed minerals.

42. Mr. GONZALEZ LAPEYRE (Uruguay) said that, bearing in mind the Chairman's recommendations concerning the length of statements, he would confine his remarks to four aspects which he considered important to the work of the Committee.

43. First, it was necessary to bestow wide-ranging powers on the Authority, because only in that way would it be capable of administering fairly the resources which had rightly been called the common heritage of mankind.

44. Secondly, it was important to state the aims and principles of the organization clearly and precisely in the relevant provisions. In other words, those provisions should define the aims and rules of procedure of the Authority and of its members, taking account of the principle that those peoples and States should be favoured who were most affected by the existing structure of the world economy.

45. Thirdly, it would be preferable not to enter into the rules and regulations in too much detail so that the machinery could subsequently adapt itself to evolution on technical, juridical and economic levels.

46. Fourthly, in order to attain the proposed objectives, the Authority should be authorized to act as a business concern, not only in collaboration with States and in mixed companies, but directly.

47. The Uruguayan delegation felt that the draft submitted by his country and other Latin American countries in document A/AC.138/49,¹ when put in final form by the Committee, could serve as a useful basis for its work.

48. Mr. CHAMBERLAIN (United Kingdom) stated that Sub-Committee I of the sea-bed Committee had clearly iden-

tified the issues to be considered and that its work should provide an excellent basis for negotiations.

49. In the view of his delegation the Committee would have to resolve three main questions. The first was whether the exploration and exploitation of the resources of the international area should be regulated by a licensing system or whether the Authority itself should be responsible in which case it would take direct charge of those operations. The second question was the form that the structure of the Authority should take. While there was general recognition of the need for an assembly in which all member States would be represented and for a council of limited composition, there were differing views as to the powers, functions and composition of those two organs and their relationship with each other. Thirdly, even if it were possible to achieve a draft of articles covering the international régime and Authority, that would provide only a skeleton which it would be necessary to complete with detailed rules which, in the view of his delegation, should be drawn up at the same time as the substantive articles.

50. Obviously without those rules and regulations, it would not be possible for States to have a clear idea of the kind of authority with which they would be dealing. Given the large investments that would be required, they would be reluctant to assume commitments without knowing the precise terms and conditions under which the Authority would operate. Another reason why his country attached importance to the elaboration of rules and regulations was that, as Dr. Pinto had stated with reference to the system of exploitation of the resources of the international area, there were certain similarities between the various systems that had been proposed. All systems envisaged that in the initial phase at least the work should be undertaken by those few entities which currently had the necessary technological capability and that there would be contracts, the terms of which had yet to be defined, between such entities and the Authority; the nature of these contracts determined the difference between the various proposals, and it would be for the rules and regulations to fulfil the role of determining the precise terms and conditions of such contracts.

51. His country fully supported General Assembly resolution 2749 (XXV) which stated that the sea-bed and ocean floor beyond the limits of national jurisdiction was the common heritage of mankind. Indeed there was general agreement on the substance of that resolution; differences of view existed concerning the best means of implementing it. While his delegation was prepared to adopt a flexible attitude it believed that three fundamental principles should be enshrined in the international régime. First, that the régime should ensure that all countries, including developing countries, should be able to participate in the exploitation of the area and enjoy the benefits deriving from it, when they were ready to do so. Secondly, the régime should favour the developing countries in the distribution of revenue; that task might be entrusted to an organ of the Authority in which those countries were in a majority. Finally, the régime should provide for representatives of developing countries to receive training in deep-sea mining technology.

52. His country would wish to avoid the establishment of an unwieldy and expensive International Authority which might prove to be a financial burden to its member States.

53. In 1971, the United Kingdom had tabled a detailed proposal for a licensing system.² That proposal had not been supported and his delegation did not propose to press it at the Conference; however, after giving careful consideration to the alternative possibilities, it had concluded that a licensing system still remained the best way of achieving the objectives he had outlined. He therefore proposed that in order to prevent the area and its resources from becoming the monopoly of a few highly developed nations, any licensing system should set a

¹ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21, annex I, sect. 8.*

² *Ibid.*, sect. 6.

limit to the size of the area which any licensee State would be entitled to exploit at any one time.

54. With regard to the composition of the proposed assembly and council, his country was prepared to adopt a flexible attitude provided that the régime and machinery adopted were otherwise satisfactory.

55. Mr. RATTRAY (Jamaica) welcomed the representative of the United Republic of Cameroon as Chairman of the Committee, and said that his devotion to the work of Sub-Committee I of the sea-bed Committee had enabled him to draft a report which clearly identified the issues. Further, he expressed his deep gratitude to Mr. Pinto of Sri Lanka, who had devoted his energies to the cause of the common heritage, and would continue his efforts as Chairman of the unofficial meetings of the Committee.

56. The Committee's mandate rested on the Declaration of Principles, that is to say, the 10 commandments laid down in General Assembly resolution 2749 (XXV). He had recalled those fundamental principles in order to bring out the true nature of the common heritage area, and of the régime and machinery essential to maintain its integrity. Once the fundamental postulates of the Declaration of Principles were accepted, the task of negotiating and formulating the necessary machinery fell into its true perspective. It was to be regretted that negotiations had frequently been conducted in the context of confrontation between developed and developing countries. In the present case, however, if they remained loyal to the commandments laid down in the Declaration, there could be no confrontation. The common heritage belonged to mankind as a whole and should be administered as such. The Conference should therefore decide, not who might exploit the common heritage, but how the heritage could be exploited for the benefit of mankind as a whole, with due regard to the interests and needs of the developing countries. For that reason some delegations had proposed that the resources of the area should be exploited directly by the commercial arm of the Authority—the enterprise. He hoped that negotiations would begin by abandoning such doctrinal concepts as "licensing", which were contrary to the concepts of the common heritage. What must first be done was to determine how mankind could derive benefits from the activities envisaged. First, exploration and exploitation of the area which constituted the common heritage would demand the use of specific technology for protecting and harvesting the resources of the area. Secondly, relatively few developed countries had the necessary technology. Thirdly,

relations would have to be established between the custodians of the common heritage and the proprietors of the technology. Fourthly, the relationship must respect the commandments established in the Declaration of Principles. The very fact that the need was recognized to establish that relationship showed that the fear of discrimination against developed countries was unfounded. Whether the Authority were to involve itself directly or indirectly in exploration and development of the area, the technological needs remained the same. All that was required was to ensure that the technical capabilities were sought on a basis which was non-discriminatory. In establishing a relationship between the suppliers of technology and the proprietors of the common heritage, it should not be overlooked that the developed countries would derive considerable benefits from the activities envisaged to the extent that demand for their goods and services would increase.

57. The Declaration of Principles pointed the way to the establishment of strong international machinery with powers extensive enough to ensure that resources did not become the property of a few privileged countries, were not destroyed or damaged by indiscriminate exploitation, that the nationals of developing countries could acquire training in all aspects of marine technology, that the marine environment was protected and that production and marketing of products of the common heritage were regulated to ensure that the economy of the developing countries did not suffer, and finally to ensure an equitable sharing of benefits.

58. The Committee should study the problem of the type of control to be exercised at all stages of exploration, exploitation, production, distribution and the marketing of the resources. Control should be exercised at all stages to safeguard the interests mentioned in the Declaration, and especially to protect the economy of developing countries and ensure that all countries received their due share of the advantages derived from the exploitation of the common heritage. Whatever institutional framework was adopted, all those considerations would have to be taken into account and the common heritage would thus serve as a catalyst in the creation of a new order of international social justice.

59. As a representative of the country which had offered a home to the Sea-Bed Authority, Jamaica was conscious of the fact that that organization should serve the interests of mankind, and he hoped that the Authority would translate into reality the concepts of a common heritage.

The meeting rose at 12.20 p.m.

5th meeting

Tuesday, 16 July 1974, at 10.40 a.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Statements on the international régime and machinery (*continued*)

1. Mr. HAFNER (Austria) observed that the matters with which the Committee was dealing constituted the very basis of the principle of the common heritage of mankind, a principle to which the Committee should be faithful.

2. It followed from that principle that all States should receive their share of the benefits derived from the exploration and exploitation of the resources of the international area. Those States which did not have direct access to the international area, including the geographically disadvantaged States and land-locked States such as Austria, should be given access

to the area. Once they had that right, that group of States would be on an equal footing with the coastal States. In establishing the international régime, due account should also be taken of the different stages of development of the States concerned.

3. The concept of the common heritage implied not only the sharing of the benefits derived from the area but also the establishment of universal co-operation in the rational exploration and exploitation of the resources: land-locked States should therefore be able to co-operate with other States in those activities and participate in the development of marine technology.

4. The International Authority should be endowed with the powers necessary to ensure implementation of the régime. Moreover, the principle of the common heritage implied that the Authority should have a structure such as was still unusual among existing international organizations. Most delegations felt that the machinery should consist of four principal organs (an assembly, a council, an operative arm and a secretariat) linked with a very important instrument for the pacific settlement of disputes. The composition of the organs should be based on the criteria which he had already mentioned, but should also provide for adequate representation of the landlocked and geographically disadvantaged States.

5. With regard to the legal system of exploration and exploitation of the area, his delegation proposed that the International Authority should be given the opportunity to choose between the enterprise system and the licensing system, so that it could use the most efficient system depending on the needs of the time and the development of deep-sea mining technology.

6. Mr. GORALCZYK (Poland) said that the régime of the international area should be based as far as possible on the Declaration of Principles in General Assembly resolution 2749 (XXV). The task of the Committee was to translate the basic concept of the Declaration, that of the common heritage of mankind, into the language of legal rules. During the debates in the working group of Sub-Committee I of the sea-bed Committee, his delegation had given its support to the texts that followed most closely the principles adopted by the General Assembly; its position remained unchanged.

7. It was generally accepted that the concept of the common heritage implied the establishment of an international organization which would guarantee the implementation of the basic principle of the international régime. His delegation had submitted a working paper on the proposed organization (A/AC.138/44),¹ but it was open to suggestions and was prepared to seek acceptable solutions.

8. Turning to the question of the functions and powers of the organization, he said that it should have powers broad enough for it to regulate and control the exploration and exploitation of the resources of the area, secure for all States equal access to the area and its resources, and ensure an equitable sharing among all States of the benefits derived from the exploitation of the resources, with particular consideration for the interests and needs of the developing countries. The organization should have the right to impose and collect various fees, royalties and taxes on exploitation in the area. It would have to deal not only with the exploration and exploitation of the resources but also with the economic implications of the production of minerals, the promotion of co-operation in scientific research to strengthen the research capacity of the developing countries, the transfer of marine technology and the prevention of pollution of the marine environment.

9. On the question of who should exploit the area, his delegation felt the area should be open for activities by all States and other entities acting under their authority. Some delegations had suggested that the organization should have the exclusive right to explore and exploit the area and its resources, but that approach was not consistent with the Declaration of Principles, which provided that States should have direct access to the area and directly exploit its resources. Moreover, if the organization alone was entitled to exploit the area, that might delay the development of its activities. Big international monopolies which would prove the most powerful might also misuse that system and dictate their own terms to the organization. His delegation was ready to discuss the problem openly, and considered that the representative of Nigeria had made a constructive suggestion in proposing that the organization could begin by issuing licences and then, after accumulating sufficient funds, go into direct operational activities.

10. The organization should also have powers broad enough for it to ensure the equitable distribution among all States of the benefits derived from the proposed activities. Whatever system of exploitation was adopted, only a few highly developed countries at present had the necessary means to engage in that type of activity and would therefore draw direct revenues because they would be called on to provide technology and services. In the initial stage, the organization should therefore help to develop the capacity of all States to participate actively in the exploration and exploitation of the area. A substantial part of the revenue of the organization would therefore be allocated to financing various technical assistance training programmes for nationals of developing countries and of other countries not having attained a level of marine science and technology permitting the exploration of the area and the exploitation of its resources. At the same time, the organization should encourage the transfer of scientific knowledge and technological know-how to the developing countries and other countries in need of such technology, thus helping to translate into action the concept of the common heritage.

11. In conclusion, he expressed his delegation's support for a democratic decision-making process, which would take account of and adequately guarantee the legitimate interests of all States. Only if decisions were taken democratically would the exploration of the area and the exploitation of its resources be carried out for the benefit of mankind as a whole.

12. Mr. CEAUSU (Romania) said that the issues being considered by the Third United Nations Conference on the Law of the Sea were of vital importance for the peoples of the world because they were closely related to the sovereign rights of States over their natural resources and to the need to ensure the participation of all States in the exploration and exploitation of the sea-bed. The developing countries, for their part, had decided to contribute to the building of a new legal order so that the sea could be used to promote their own economic and social development.

13. The Committee's work on the régime for the international area, the common heritage of mankind, was made easier by the fact that several matters could be tackled on the basis of the Declaration of Principles. For example, there could be no question of an armaments race in an international area which was to be used exclusively for peaceful purposes, a principle which should be developed in the future convention. The régime should also reflect the principle of the equality of States. The idea that the resources of the international area could be exploited by States or by private enterprises was not consistent with that principle and could neither guarantee the equitable distribution of the benefits derived nor safeguard the interests of the developing countries. The best solution would be to establish an International Authority with the necessary powers to manage and exploit the natural resources of the area and with its membership open to all States.

14. The statute of such a body should, in all respects, reflect the principle of the equality of States. The assembly, in which all States would be represented, should have wide powers, but the council and other executive organs should have only limited powers which they would exercise under the control of the plenary organ. The composition of the executive organs should be periodically renewed and the executive posts should change hands from time to time so that all States would be represented equitably.

15. The modalities for exploiting the area should be based on the Declaration of Principles; the objectives set forth in that Declaration would be attained only if the International Authority was entitled to engaged, directly or indirectly, in exploration and exploitation of the resources of the area. At the present time only a few States were engaged in scientific research and exploration of the sea-bed and they had the necessary technology for the industrial exploitation of the resources. If all States were to be involved in such activities, agreement

¹ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21, annex I, sect. 4.*

should be reached on provisions for organizing co-operation in that field. States parties to the future convention should undertake to promote the transfer of technology and exchange of scientific knowledge on the exploration of the area and the exploitation of its resources, perhaps under programmes for the benefit of developing countries. The international organization, for its part, could establish permanent machinery for the acquisition, dissemination and transfer of scientific and technological know-how, and for training nationals of developing countries so as to ensure that such countries participated fully in the activities carried on in the area. That was the only way to bridge the gap between the developed and developing countries in the field of science and technology and to ensure exploitation of the resources of the area for the benefit of mankind.

16. Mr. URIBE VARGAS (Colombia) stated that the process of decolonization should be extended to the oceans so as to ensure that their resources contributed to the establishment of international economic justice and that nations developed in an egalitarian society. General Assembly resolution 2749 (XXV) and the preparatory work of the sea-bed Committee were very important in the formulation of an international law based on principles other than those of the hegemony of the great Powers.

17. The initiative taken by the Latin American countries in extending their exclusive sovereignty over the resources situated in a zone of 200 nautical miles derived from the recognition by the coastal States of their legitimate rights and could certainly not be interpreted as an abuse of jurisdiction. For its part, the Committee should seek primarily to establish the machinery best designed to ensure that the international community benefited from the uses of the sea's resources.

18. The greatest threat to the success of the Conference could be the dilatory tactics of some States which could be an obstacle to achieving positive results of immediate application.

19. He suggested that the Committee should take note of the document submitted by certain Latin American countries concerning the sea-bed régime (A/AC/138/49),² because it showed their desire to contribute to the development of a new law of the sea. The Committee should also bear in mind that regulatory treaties belonged to a bygone era; it would be better to think in terms of "framework-conventions" and allocate competence to international organizations whose structure could be modified, in order to tackle problems with the flexibility and pragmatism required in changing circumstances. In a "framework-treaty" it would therefore be necessary to demarcate the area, enumerate the basic principles of the régime, define the democratic structure of the organization and the organs to which the international community would delegate powers. The International Authority should be a democratic body responsible for bridging the gap between the rich countries and the poor countries and establishing a fairer and more just system of international relations. No greater risk could be incurred than to allow certain Powers to accumulate further privileges to the detriment of the developing countries and that could only be avoided by basing the structure of the International Authority on the principle of the equality of States and by rejecting any machinery which would jeopardize the principle of the simple majority in the decision-making process. All States must participate in defining the political and economic roles of the organs which constituted the Authority which should ensure that decisions were implemented and penalties imposed on those who did not abide by them.

20. The convention should provide for the establishment of an assembly with legislative powers, in which no State would have a casting vote, an executive council consisting of groups of technical advisers responsible for carrying out the decisions of the assembly, the members of which would be elected for a term of two years, a tribunal with the power to settle disputes

which might arise in administering the exploitation of the area, an enterprise which would directly exploit the resources under the supervision of the assembly and ensure the transfer of technology, and finally an administrative secretariat. Thus constituted, the international machinery would embody two basic principles: the assembly would have the power to draw up mandatory regulations and the tribunal would settle disputes arising out of decisions taken by the executive council or other organs. Without international democracy within the Authority, the privileges of States possessing technology and financial resources would be enhanced. Without a tribunal, the Authority would not have sufficient power to ensure that States complied with their obligations.

21. Because they were in the majority, the Conference gave the third-world countries the opportunity of imposing bold solutions in order to create a new law of the sea. The international structures would reveal all their weakness if attempts were made to regulate in great detail matters as susceptible to change as the resources and potential of the oceans. For that reason, his delegation emphasized the need to tackle without delay the question of establishing a democratic International Sea-Bed Authority, so as to provide the political and juridical controls necessary for ensuring that all States exercised their rights and for removing any justification for reservations concerning the composition of the organs and the mandatory nature of the decisions which would be taken.

22. He stressed the need, when defining the international area, to take account of the fact that it comprised not only the sea-bed and ocean floor and the subsoil thereof but also the resources situated in the corresponding water column. Indeed, to exclude minerals in suspension and other resources independent of the sea-bed from the jurisdiction of the régime would deprive the Declaration of Principles of all relevance.

23. Finally, the land-locked countries should be properly represented in the proposed Authority in the interests of international justice and the equality of States.

24. Mr. ADEDE (Kenya) said that his delegation was prepared to enter into serious negotiations in the Committee with a view to ensuring that the aims of the Declaration of Principles were embodied in a convention. Such a convention should provide a sound, realistic basis for the exploitation of the resources in the area declared to be the common heritage of mankind.

25. The concept of the common heritage of mankind was derived from three basic ideas. First, the international community should take the necessary steps to ensure an equitable sharing of the resources of the area, taking into account in particular the interests of those who, in the past, had not had a chance to participate effectively in the exploitation of those resources and the advantages derived from them. In that connexion, the international community should remove the dangerous temptation for the powerful States to impose their will on other countries. Secondly, the area should not be subject to appropriation by any State, or juridical or other person. Finally, the area should be used for peaceful purposes only.

26. From those three basic ideas there emerged two important issues which the Committee should tackle in order to give full meaning in a convention to the concept of the common heritage of mankind. The first issue was the formulation of the fundamental principles of the sea-bed régime dealing with the limits of the area and the question of who could exploit the area. The second dealt with the structure and functions of the international machinery to be established.

27. In view of the limited time available to it, his delegation would confine its remarks to the second issue. He felt it necessary to restate that, as the chairman of his delegation had stated in the 25th plenary meeting, Kenya felt that the international machinery should have the power to undertake all exploration activities in the area, the exploitation of its resources

²*Ibid.*, sect. 8.

and all other related activities, either directly or in such ways as it deemed appropriate, while retaining direct and effective control at all times over such activities. Accordingly, in the view of his delegation, the following five organs should be established to constitute a strong authority: an assembly—the plenary organ; a council—the executive organ; an enterprise—the operational organ; a secretariat, to service all the organs of the authority; and finally a tribunal, for the settlement of disputes relating to the convention.

28. The assembly which would be responsible for policy-making, would be composed of all States parties to the convention, each having one vote. Its powers should include *inter alia*, the election of members to the other organs of the Authority; the establishment of appropriate subsidiary organs to deal with preservation and enhancement of the marine environment, to regulate and control the conduct of scientific research, to guarantee safety at sea, to ensure an equitable sharing of the benefits and to minimize the adverse economic effects of the fluctuation in the prices of raw materials that might result from exploitation of the sea-bed resources; the appointment or election of officers to all the organs of the Authority on the recommendation of the council; and the power to make decisions on financial and budgetary matters. His delegation emphasized the need to ensure that the assembly would not become an organ which merely ratified the recommendations of the council.

29. The council, the executive organ, should *inter alia* ensure implementation of the policies formulated by the assembly with regard to exploration and exploitation activities in the area. It should also recommend to the assembly the establishment of appropriate subsidiary organs or any organ relating to the functions assigned to the assembly under the convention. In the view of his delegation, the question of the size of the council's membership was closely linked with that of the voting formula for decision-making in that organ. Those two issues could be the subject of a workable compromise and he was willing to combine the principle of equitable geographic distribution with the principle of the permanent representation of certain interests in the council. He therefore suggested, tentatively and subject to possible negotiations, that the council should consist of 48 members divided into the following four categories: 6 members appointed by the assembly from among those with the most advanced marine technology, 15 members appointed by the assembly to represent various geographical regions, 3 members elected by the assembly from among the land-locked and geographically disadvantaged countries; and 24 other members elected by the assembly in order to ensure equitable representation of all other interests. The council would take decisions by a two-thirds majority of its members present and voting. His delegation was opposed to any attempt to introduce in the council particular voting devices such as preferential or weighted voting or the right of veto. The foregoing proposal was therefore a compromise designed to take into account all relevant interests while upholding the democratic system of adopting decisions by a two-thirds majority of those present and voting.

30. With respect to the enterprise, his delegation believed that any apprehension about the setting up of that organ might be dispelled if the text of the convention itself were to include the conditions under which it would operate. The enterprise should be entrusted with the responsibility of arranging the appropriate modalities for the exploration and exploitation of the area so as to ensure optimum recovery and to guarantee participation by the Authority at all levels of activities.

31. The main function of the tribunal should be to decide all questions relating to the interpretation and application of the convention, essentially on the basis of the law of the convention. The tribunal should also have jurisdiction over disputes between States parties to the convention, between a State and the Authority and between the Authority and any person with

whom the Authority had a business association. On the other hand, only the tribunal, whose composition should ensure the existence of the necessary expertise, should be competent to determine whether any international rules announced by the Authority for the protection of the marine environment and the regulation of scientific research were reasonable.

32. The secretariat should have at its head the chief administrative officer of the Authority and should provide meetings services for the Authority and occasionally give support to the work of the Authority by calling its attention to matters for consideration by the appropriate organ.

33. Besides the questions falling directly under the mandate of the Committee there were others that could not be ignored, such as the question of fisheries resources of the area or that of conflicts which might arise between non-resource uses of the area and the activities connected with the exploration and exploitation under the convention; nor could the Committee ignore the question of the prevention and control of marine pollution from all sources within the area. All issues of the law of the sea were therefore interrelated and his delegation felt that the appropriate committees might begin consideration of the question of regulation and rational management of the living resources of the open sea and the preservation and enhancement of the marine environment in that same area. At a suitable time, and in the appropriate Committee, his delegation would make concrete proposals on those issues.

34. With respect to the question of the location of the seat of the International Authority, his delegation recalled that the capital of Kenya, which was a developing country, had recently been chosen as the headquarters of the United Nations Environment Programme and it believed that that trend of locating the headquarters of international organizations in developing countries should be encouraged. For that reason, it was happy to support Jamaica's bid to host the headquarters of the future Sea-Bed Authority.

35. Mr. RAKOTOSIHANAKA (Madagascar) said that he would merely mention the basic points to which his delegation attached the greatest importance.

36. The concept of the common heritage of mankind was not really new, since even the previous law of the sea had recognized the principle of *res communis*. What was really new was the proposed application of that principle for the benefit of all mankind. The purpose of the Conference was to end the current disorder in the ocean space and to harmonize the interests of all States on the basis of the principles of equality and non-discrimination. It was on that basis that the nature and features of the international area and the machinery for administering it was to be defined. In that connexion, there were grounds for the full implementation of the Declaration of Principles whose golden rule was the equality of all States with respect to their common heritage which should not therefore be the object of appropriation, claims or monopoly on the part of some.

37. The concept of common heritage should not be in conflict with the interests of coastal States because the limits of the area where that concept applied should not encroach on the national jurisdiction of those States. With respect to the delimitation of the international area, his delegation believed that the bathymetric criterion should be abandoned, since it had now been bypassed by technological progress. The recognition of the interests of riparian States should take into consideration the geographical, physical and morphological conditions of those States. Furthermore, any activity in the areas straddling the limits of national States or areas adjacent to those limits would require the consent and participation of the State concerned.

38. With respect to the international régime and machinery to be set up, rules should be established to achieve the desired objectives. A weak machinery which would merely co-ordinate the activities of different States by issuing licences would

merely perpetuate the *status quo* without meeting the need for an equitable sharing of the resources of the common heritage. Only an Authority representative of the entire international community and having wide powers could safeguard the real freedom of the high seas and the rational exploitation of the sea-bed for the benefit of all peoples without distinction. His delegation would prefer a business type of machinery which could explore and exploit the international area directly. That universal and democratic Authority must have real legislative and regulatory powers, and its structure and methods should not reflect artificial categories based on wealth and power.

39. The main body of the Authority, the assembly, comprised of all States members of the Authority, must have ultimate policy-making or decision-making powers. It was indispensable that each State participate in the formulation and adoption of all rules governing the heritage of mankind, and his delegation rejected the idea of certain States for a restricted body, the council, as the core of the Authority since that would result in a perpetuation of the great-Power veto system, the consequences of which were well known. Any restricted body which it was deemed necessary to establish for reasons of practical order, should be subordinate to the assembly.

40. With respect to the international régime, his delegation would not be satisfied with vague rules for administering the common heritage of mankind. In order to avoid the shortcomings and injustices of the past and to protect the weak against the strong, a precise legal régime should be contemplated. In that connexion, it should be noted that if the third world must, according to the wishes of the United Nations, close the gap which separated it from the technologically advanced countries, it must be assisted from the exploitation of the sea-bed; in other words, if the proposed régime and machinery was to grant preferential rights, then those should be exclusively for the countries of the third world whose development had up to the present been unjustly impeded. The international régime must therefore promote the development of the developing countries and the technical training of their nationals. Moreover, scientific research and activities undertaken in the international area under conditions set by the Authority must serve the interests of the international community, particularly the third world.

41. Finally, he wished to emphasize that the seas and oceans must be used exclusively for peaceful purposes, and he hoped that the legal régime for the area would enable the Authority to take measures with a view to maintaining international peace and security and conserving the resources of the sea-bed for future generations.

42. Mr. MONNIER (Switzerland) said that his delegation recognized the need to determine limits for the international area of the sea-bed and ocean which could be uniform and secure. In that connexion, the simplest and most satisfactory criterion appeared to be that of a certain distance from the coasts. Moreover the limits defined must not be open to challenge by the unilateral assertion of rights to resources located beyond the agreed limits. It would be difficult to understand how the limits of what everyone accepted as the common heritage of mankind could be challenged by virtue of acquired rights, since the doctrine of the continental shelf put forward in support of such rights might lose much of its relevance, or disappear completely, as a result of the new division of the oceans.

43. On the contrary, all States, without distinction and regardless of their economic level and geographical location, must be ensured of access to and from the area.

44. With respect to the sharing of the benefits from the exploitation of the area, it should be noted that a strict application of the principle of equality might on the contrary have inequitable results and that that sharing must take particular account of the needs of the most disadvantaged countries.

45. Turning to the proposed international machinery his delegation believed that it should be sufficiently strong to deal with the many problems which were still barely within the human grasp; at the same time it should be sufficiently flexible to adapt to circumstances and to the development of technology. His delegation did not believe that the machinery should necessarily follow the model of existing international organizations.

46. It seemed that an agreement on the structure of the machinery should be worked out so that it would include a plenary assembly and a restricted body called the council. His delegation believed that the composition of the latter should reflect not only equitable geographical distribution but also equitable geographical location, and particularly enable the land-locked countries to be duly represented.

47. His delegation did not believe that the competence of the Authority should be limited nor did it wish that it should operate in an exclusive manner with respect to the exploration and exploitation of the area. The issuing of exploration and exploitation licences did not appear to be incompatible with the exercise by the Authority of similar activities or with the concept of the common heritage of mankind, inasmuch as those licences would be issued under conditions guaranteeing that the exploitation would be carried out within the framework of applicable principles.

48. Finally, his delegation was in favour of setting up an effective system for the settlement of disputes. Whatever might be the features of the system established, it should provide for a mandatory settling of disputes.

49. Mr. LARSSON (Sweden) said the fact that his statement would deal mainly with two of the problems before the Conference, namely the exploitation of the international area of the sea-bed, and scientific research in that area, in no way detracted from the importance his delegation attached to other problems, for instance the establishment of an international régime and machinery. He would revert later to those questions but at the present stage wished to define his basic attitude to the principles embodied in General Assembly resolution 2749 (XXV).

50. Previous speakers had expressed different views on the question of who should exploit the resources of that area. His delegation was in favour of an authority empowered to issue licences for the exploration and exploitation of the natural resources of the sea-bed and its subsoil, such licences being granted, in principle, directly to States, but possibly also to natural or juridical persons furnished with the necessary guarantees. The Authority should also be empowered to carry out such exploration and exploitation activities themselves, either on its own or in joint ventures with States or public or private companies. The sooner the Authority was able to engage successfully in such activities, the sooner there would be a real balance between the Authority and the technologically most advanced States and companies.

51. In the opinion of his delegation, that was the only solution which would accommodate the interests of different delegations, and at the same time secure the best economic results for the international community as a whole. The Authority itself would certainly be in a better position than the Conference to make specific decisions as to how and by whom the various exploration and exploitation activities should be carried out. It would, at least after some time, possess the necessary knowledge, expertise and experience to be able to find the best solution. Giving the Authority a wide choice in those respects would be the best means of launching all projects with the best technological and financial facilities.

52. As to scientific research in the area, his delegation thought that it should not be hampered by unnecessary administrative regulations, but considered it important that such research should be conducted openly so as to ensure that only projects for peaceful purposes were carried out. Accordingly, it

would seem advisable that the Authority be given advance notification of all research projects in the area, that it should have the right to be represented when the projects were carried out and to request dissemination of the results. That would provide an over-all picture of the activities and prevent overlapping and waste of resources. Moreover, in that way the Authority would be able to decide whether a project should be regarded as scientific research within the meaning of the convention, or as commercial exploration needing the authorization of the Authority. That solution might perhaps form the basis for a compromise between those who advocated full freedom and those who wanted scientific research in the area to be under the control of the Authority.

53. Lastly, as regards organs with limited membership, such as the council, his delegation thought that the various interests of the contracting parties should be represented. Thus, the developed countries and the developing countries, coastal States and land-locked States should all be represented, with due regard to geographical distribution. His delegation felt also that it was important that developing countries and small developed countries should exercise a real influence in the council.

54. Mr. BARNES (Liberia) thought that the draft articles adopted by the Committee for the establishment of the régime and an international machinery should be the starting point of its work. Several delegations had rightly pointed out that there existed substantial differences as to the interpretation of the common heritage principle, a fact which was a matter of concern to his delegation. It would nevertheless suggest that they should proceed to consolidate those areas on which there was a common approach and then negotiate the questions where divergent views existed.

55. In establishing the Authority, attention should be paid not only to the rights and imperatives of the Authority, but also to the corresponding duties of developed or developing States. The problem should be approached with the respect due to the principles of international law and democracy.

56. The Committee should begin forthwith to incorporate into a single draft the proposals before it for the establishment of the international machinery, bearing in mind that the use of the sea-bed and ocean floor should be for peaceful purposes and for the benefit of all mankind. The Committee could negotiate from that point, basing itself on the principle of equality of all States. Once common agreement on the proposals had been reached, the Committee could proceed to consider other crucial and important aspects, such as the status of the Authority and its subsidiary organs. In view of the time element involved, if the Committee continued with an academic exercise, instead of getting down to actual work, the Conference would pass into history as having made a fruitless attempt to establish international rules whereby mankind would benefit from the resources of the oceans under conditions of peace and international understanding. The Conference could not afford to fail; if it did, the consequences would be serious for the future of mankind as a whole.

57. Mr. KASEMSRI (Thailand) said that, like the Chairman, he thought that the work of the First Committee should be speeded up; first, so that it should not be taken by surprise by political decisions in the other committees; secondly, to avoid the possibility of certain trends developing and exerting themselves in the other committees which could radically affect the course of the First Committee's deliberations.

58. His delegation supported the legitimate rights and aspirations of land-locked States and geographically disadvantaged countries, the more so as Thailand itself could be considered to be seriously disadvantaged on account of its geographical situation on a semi-enclosed sea, especially if existing international law and the rights recognized thereunder, were to become modified by the new international law of the sea.

59. His delegation had from the outset supported the principle of the common heritage of mankind. Nevertheless, at the current stage of the Committee's work, a reasonable period of time should be allowed to give effect to that principle. There was no question that the principle, which was a fundamental one, was now universally accepted; the need at the present stage was to provide a working structure for the exploration and exploitation of resources of the sea beyond national jurisdiction, for the common good and in good time.

60. His delegation would like to consider in more detail certain characteristics of the proposed international machinery. It had already announced that it favoured the establishment of an effective international machinery with broad authority regarding management and exploitation of resources of the sea and ocean. It was essential that the Authority should be a really competent one. It must therefore have the necessary capacity to operate effectively, for the real benefit of the international community, while having regard to the special needs and interests of the developing countries. He appreciated the generous offer made by Jamaica to be the seat of the new Authority.

61. The time had come to study the structure of the international machinery and in that connexion the Committee would have to take into account the following three points: first, the international body could not be expected, in the early phase of exploitation, to provide sufficient benefits for general distribution; consequently that early phase might last several years; secondly, the longer it took for the Authority to secure permission to start operations, the longer it would take for any real benefits to be derived from such operations; thirdly, the present rate and trend of technological progress seemed to indicate that the technological gap was likely to increase rather than decrease. That in turn implied that, where such a gap existed, seabed resources would remain untapped for a long time to come. Unless the Authority was provided with the means and facilities to narrow that gap, it would become a weak and ineffectual organization, no matter what legal powers were vested in it.

62. His delegation, like those of Nigeria, Peru and Sweden, was constrained to accept certain realities. It envisaged that the Authority should begin to function as soon as possible, perhaps in three stages.

63. The first stage would involve co-operation with the private sector, which was well advanced technologically, preferably in the form of joint ventures, with the Authority holding a majority interest of not less than 51 per cent.

64. The second stage would witness a gradual increase in the Authority's participation in the activity of exploration, with a corresponding increase in its share of the benefits while the participation of the private sector would diminish, for when the latter was no longer making satisfactory profits, it would transfer its investments to the Authority.

65. Finally, the Authority would arrive at the third stage of functioning on its own without any further participation of the private sector.

66. The maximum duration of each of those stages and the respective shares in the profits would be stated in the convention or constitution of the Authority, subject to review and possible modification by the assembly at the end of each stage. Provisions for a trial period might also be agreed upon.

67. It should also be agreed that the Authority would be able at any moment to exercise control over the activities of exploitation. There would be no freedom of exploitation in the international area. It was necessary to lay down effective rules and a time-table for the transfer of technology to the Authority with adequate participation of the developing countries.

68. Consequently, during the initial phase the International Authority should be provided with the necessary funds, which would be distinct from its administrative budget, to allow it to acquire indispensable technology and equipment. A portion of those funds could be made up of voluntary contributions, but

the bulk should come from the exploitation of the resources of the sea-bed with or without the participation of the private sector. The major part of revenues, therefore, should go to the Authority so that it could become self-sufficient as early as possible and be capable of the effective operational role which it should play.

69. It would be necessary to allocate, as a matter of priority, an important part of the profits to the developing countries which were land-locked, shelf-locked, or geographically disadvantaged, or again to those States for whom the exploitation of the resources of the sea would have adverse effects. It might even be necessary in that connexion to provide for preventive measures to avert any economic dislocations to which the exploitation of those resources might give rise.

70. With regard to the structure of the International Authority, his delegation had no objections to its being made up of four or five principal organs, namely an assembly, a council, an operating arm, a secretariat, and a machinery for the settlement of disputes; the functions of those organs would have to be defined in the convention. Nevertheless, if a general agreement were not reached at the third Conference, his delegation saw no reason why the assembly could not be convened at an early date in order to resolve the question of the council's composition. It would obviously be preferable, however, for the Conference to reach a general agreement along the foregoing lines as soon as possible.

71. With regard to the powers of the assembly and its relationship with the council, the basic question, as had already been underlined, was where the executive power was to reside. His delegation hoped that the assembly would have the final say as to supervision and approval particularly of any matter concerning joint operations with the private sector in the early stage of activities. Any individual member of the council should also be able to appeal decisions taken by that body, particularly in regard to exploitation, before the assembly. That right of appeal could nevertheless be suspended in an emergency situation, provided that, in such cases, the decisions of the council were reviewed and endorsed by the assembly within a reasonable lapse of time.

72. His delegation was convinced that such an assembly would meet the basic need for a truly democratic international machinery which would assure that the benefits of the common undertaking would, on an equitable basis, go to mankind as a whole.

73. Mr. CHOWDHURY (Bangladesh) said that the General Assembly had set forth the general lines which should govern the nature, scope and fundamental provisions of the international régime, as well as the noble concept that the sea was the common heritage of mankind. That concept had been reiterated in numerous international conferences, for example in the Specialized Conference of the Caribbean Countries on Problems of the Sea, held at Santo Domingo in 1972 and at the fourth Conference of Heads of State or Government of Non-Aligned Countries held at Algiers in 1973. Bangladesh supported that principle without reservation and would work unceasingly in co-operation with other nations for its effective implementation.

74. His delegation strongly hoped that the rules governing the international régime and machinery would be established without any further delay. Bangladesh had already declared its support for a territorial sea of 12 miles and an economic zone of 200 miles within which the coastal State would be free to develop the resources of the sea. Beyond the economic zone, no

individual or group of individuals, or any State or group of States should be allowed to pursue their selfish ends. The sea had to become a source of wealth, peace, and tranquillity, not a source of conflicts. The rules, regulations and principles should reflect a concern for the well-being of mankind and not any imperialist or colonialist interests. The law which was to be established had to be adopted in an atmosphere of confidence and respect, so that all parties would co-operate spontaneously in economic development. That law had to be clearly laid down to avoid future disputes as far as possible.

75. With regard to the application of the concept of the common heritage of mankind, his delegation believed that not only the sea-bed, but all ocean space including the superjacent waters and their resources, and all activities which were carried on there, should fall within the exclusive competence of the international régime.

76. Opinions were divided concerning the Authority's powers in the realm of management of resources. Bangladesh favoured an Authority empowered to undertake all relevant activities in the zone, namely, exploration, exploitation, the protection of the marine environment, and scientific research, either on its own or by any other means on which it might decide. In any case, the Authority had to maintain a direct control over the activities carried out in the zone and avoid delegating any of its powers of exploitation whether to physical or juridical persons.

77. With regard to powers and functions, the basic problems seemed to concern the composition and the decision-making procedures of the executive body. Bangladesh hoped that the Authority would comprise four organs. First, an assembly, in which all countries would be represented on an equal footing, would be the principal policy-making organ; like the General Assembly of the United Nations, it would be the supreme body of the Authority; secondly, there should be a smaller body which could be called, for example, the governing council. The membership of that body should reflect an equitable geographic distribution, with due regard to the position of the coastal and land-locked States. It would be the main executive body and should carry out its functions in a democratic manner. His delegation maintained absolutely that there should be no right of veto or any system of weighted votes in the council, since the notion of veto implied the inequality of States and a will to dominate which could not be tolerated. The council should be empowered to carry out or to regulate all the activities of exploration and exploitation and it would ensure an equitable distribution of the economic benefits among all States taking specially into account the interests and needs of the developing countries. Thirdly, to give effect to the resolutions of the assembly and the decisions of the council, a secretariat vested with administrative powers would have to be set up. Lastly, some machinery would also have to be provided for the equitable settlement of disputes, subject of course to the possibility of an appeal to the International Court of Justice, for with all the goodwill in the world, such disputes could hardly be avoided.

78. His delegation was firmly convinced that the exploration and exploitation of the resources of the zone had to be carried out for the benefit of all mankind and in such a way as to promote the orderly development of the world economy and to minimize negative economic effects on the developing countries. The moment had arrived to begin that task and it must be undertaken with humility, sincerity, and devotion. He assured the Conference of the full and sincere co-operation of his Government.

The meeting rose at 1.05 p.m.

6th meeting

Tuesday, 16 July 1974, at 3.10 p.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Statements on the international régime and machinery (continued)

1. Mr. RATINER (United States of America) said he wished to remind members that the mandate of the First Committee did not include the elaboration of treaty articles for the control of activities in the waters superjacent to the international seabed area by the régime and Authority. That matter fell more properly within the mandate of the Second Committee. He appealed to delegates to refrain from proposing such articles, so as to ensure the continued co-operative spirit of negotiation in the First Committee.

2. Mr. RANA (Nepal) said that the scope of paragraph 5 of the Declaration of Principles contained in General Assembly resolution 2749 (XXV) included the concepts of participation by all coastal and land-locked States in the establishment of the régime and Authority to govern activities in the international area, and of an equitable sharing of benefits. That resolution clearly indicated that the area governed by the international régime and the limits of national jurisdiction were interrelated. Inasmuch as participation in the international area was open to all States, the extent of national jurisdiction should not jeopardize the economic viability and potential of the area covered by the international régime. The international area should be as large as possible. He supported the idea of establishing an International Authority, but pointed out that it would be meaningless to do so unless the international area was economically viable. All States should be represented equally in the Authority; the land-locked States must have adequate and proportionate representation in the proposed Council and should participate in any decision on matters of substance involving their rights and interests.

3. The Authority should have comprehensive powers so as to ensure that the exploration, exploitation and management of marine resources would benefit all mankind. It should carry out the work of exploration and exploitation directly but, during an interim period, it could be authorized to work in collaboration with other specialized agencies or to grant licences to States, individuals or bodies corporate to carry out such work on a revenue-sharing basis.

4. The benefits derived from the international area should be shared by all States equitably, with particular consideration being given to the needs and interests of the least developed countries in accordance with General Assembly resolution 2749 (XXV).

5. As a land-locked country, Nepal attached great importance to the right of land-locked countries to free access to the international area. The coastal States should have no difficulty in providing transit facilities to ensure equal participation by land-locked countries in the work of exploring and exploiting the area.

6. Mr. PEDERSEN (Denmark) said that the recognition of the existence of an area of the sea-bed and ocean floor beyond national jurisdiction implied that internationally recognized criteria must be established to delimit the area precisely. Although his delegation had previously favoured a combined depth and distance criterion, the mapping of the sea-bed was not yet sufficiently complete to allow reliance on a depth criterion. Consequently, the adoption of a distance criterion of up to 200 miles from the baseline for delimiting the sea-bed area under national jurisdiction would be the most realistic ap-

proach. That approach would leave to the international community as well as to coastal States sizable areas of the continental slope and rise and would tend to counterbalance geographical differences between countries in respect of adjacent submerged land. One problem that might require special consideration was the possibility that some countries would be deprived of their rights under the Convention on the Continental Shelf¹ in respect of that part of the shelf extending beyond the 200-nautical-mile limit. The scope of the régime should include only the deep-sea area and its subsoil beyond national jurisdiction and not the superjacent waters.

7. Of the three systems of exploration for and exploitation of resources contained in the draft articles prepared by the working group of Sub-Committee I of the sea-bed Committee, his delegation favoured a mixed system under which the International Authority, States and private companies would all be given an opportunity to exploit marine resources. Although it might seem natural to confer exclusive rights of exploitation on the Authority, it had to be admitted that the technological skill and financial means required were available in only a few of the most developed countries. The régime must take that fact into account and must level out as fast as possible existing differences in capabilities. The system should provide for the transfer of technology to the Authority, possibly as a condition of granting licences. The distribution of revenues from the Authority should not begin before it had amassed sufficient capital for sea-bed exploitation. The licensing system proposed by the representative of the United Kingdom would ensure the orderly development of sea-bed resources and would reserve areas of the sea-bed for later exploitation by the Authority and by countries which did not yet possess the necessary technological or financial means.

8. Although his delegation's position on the competence and structure of the Authority was rather flexible, he emphasized that it should be concerned exclusively with exploration for and exploitation of the sea-bed resources of the international area. There seemed to be general agreement that the principal organs should be an assembly, a council, a secretariat and a tribunal. Every party to the international sea-bed convention should have one seat in the assembly, which should be the supreme organ of the Authority, competent to discuss any matter within its terms of reference and with power to discuss and outline the guidelines for its policy. The assembly should elect the members of the council and approve its budget and reports. Each member State should have one vote; decisions should be taken by a simple majority.

9. The composition of the council must reflect the diverse interests of States parties to the convention. There should be equitable geographical representation with special regard to the developing countries, and special provisions must be made for States that had established a sea-bed technology. To ensure due regard for the interests of coastal States in activities in their adjacent waters, countries with long coastlines or large shelf areas must be represented on the council. The council should have no powers other than those expressly conferred on it by the convention or the assembly. Its most important function would be to administer the licence system. Decisions on matters of substance should be taken by a two-thirds majority; some kind of cumulative majority might also be considered in

¹United Nations, *Treaty Series*, vol. 499, p. 312.

order to secure the interests of one or several small groups of countries.

10. Mr. JEANNEL (France) observed that the Committee's task was made difficult by the fact that the subject of its discussions did not yet have concrete existence. No industry had yet extracted nodules from the sea-bed to convert them into useful metals. Nevertheless, if theory was to be translated into practice, abstract approaches must be compared with reality.

11. Two sets of problems were to receive prior attention from the Committee in its informal discussions: the economic implications of exploiting the resources of the sea-bed, and the drafting of rules to regulate mining in the area beyond national jurisdiction. He suggested that two other subjects should receive particular consideration: a more detailed exchange of views on the structure of the International Authority to administer the international régime, and the delimitation of areas in which exploitation could proceed. The Committee must consider whether all areas beyond national jurisdiction should be open for exploitation or extraction should be concentrated in one or more very specific areas. There was also the question whether parts of the areas defined should be reserved for future exploitation. The answers to those questions would undoubtedly make it possible to take into account the fact that the developing countries must be left attractive fields of activity for the time when they would acquire the necessary technology.

12. Mr. SORIANO (Philippines) said his delegation wished to raise two vital points: the limits of the international area, and the extent of the International Authority's participation in the exploration and exploitation of the resources of the sea-bed.

13. The extent of the international area was directly linked with the breadth of the territorial sea—an issue that had yet to be resolved. He reiterated his country's special interest in the matter, as set out in document A/AC.138/SC.II/L.15 (see A/9021 and Corr.1 and 3, vol. III, sect. 2). His delegation also sought recognition of its historical right to its territorial sea. The preservation of the political and economic unity and of the security of an archipelagic State, the preservation of its marine environment and the exploitation of its marine resources justified the inclusion of the waters inside an archipelago in the waters under the sovereignty of the archipelagic State and the recognition that those waters had special status.

14. The International Authority must be effective, it must function under a mandate given by all States, it should have authority to exploit resources directly, and its decision-making and legislative powers must not be subject to veto by any State. Its effectiveness would depend on its ability to ensure the orderly and safe development and rational management of the area and its resources. It must ensure that States would receive equitable shares in the benefits from the area, taking into consideration the interests and needs of the developing countries in keeping with the Declaration of Principles contained in General Assembly resolution 2749 (XXV). His delegation favoured the suggestion that the International Authority should consist of the following: an assembly with supreme authority, composed of representatives of all member States; a council of restricted membership based on equitable geographical representation to execute policy decision; a secretariat composed of international civil servants to service the organs of the Authority; and a tribunal for the settlement of disputes between member States or between a member State and the Authority. The Authority should have the right of direct exploitation although, in the early stages, it should be authorized to grant exploration licences.

15. Mr. DORON (Israel) observed that the motto of "liberty and collaboration" put forward by his delegation in the plenary meetings would aptly apply to the problems of exploring for and exploiting the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction. He supported the

idea of establishing an international régime and Authority and favoured the proposal to establish the Authority in Jamaica. Great care must be taken in laying the foundation for a new international régime; the functions and authority of the International Authority would have to be considered and defined very thoroughly. In so doing, a distinction must be made between the problems of the status and structure of the Authority and those of its functions and powers.

16. It was clear that the Authority would be active in the wide and open oceanic spaces, rather than in such limited and enclosed areas as, for example, the Mediterranean. As a developing country labouring under obvious geographical disadvantages but endowed with some technical knowledge and technological capacity, his country looked forward to participating in the work of the new Authority which would open wide prospects even for small countries. Every State should have the right to participate in the venture and to share equitably in any benefits derived from its activities and from the exploitation of what was already generally recognized as the common heritage of mankind.

17. A number of interesting proposals had been put forward concerning such questions as the structure of the new Authority, and it had been stressed that there must be no discrimination against any State. Although the principle was a laudable one, he reminded the Committee that even such laudable ideas as that of equitable geographical representation contained the seeds of discrimination if they were applied in such a way as to allow the majority of States in a region to exclude others from participation in the group, thereby preventing their election or selection to any function. That and similar pitfalls should be avoided. His delegation considered that the structure of the new body should be similar to that of existing international institutions concerned with financial, economic and commodity affairs, and not in accordance with political stances and prejudices.

18. The CHAIRMAN said the representative of the World Federation of United Nations Associations had asked to make a statement. If there was no objections, he would take it that the Committee acceded to the request.

It was so decided.

19. Mr. OGLEY (World Federation of United Nations Associations) said that the central concern of the organizations he represented was to promote the creation and development of world institutions capable of adequately fulfilling world needs. The representative of the International Ocean Institute had rightly argued that the need to embody the concept of the common heritage of mankind in effective institutions required a multipurpose ocean space régime and machinery, of which a Sea-Bed Authority would be a subordinate constituent. Nevertheless, the Sea-Bed Authority would have significant functions and would dispose of substantial resources, as had been indicated in document A/CONF.62/25. An organization of such potential fully merited the care that the Committee was giving to the details of its structure and functions.

20. He submitted that the three-tier system proposed by some States would be inadequate. It would create a mosaic of different jurisdictions in the international area; the result could be chaos and even conflict. It could put the few existing companies in an excessively strong bargaining position and might force Governments to compete in offering those companies easy terms to ensure rapid exploitation of the blocks of the common heritage area allocated to them. Those Governments might be handicapped in the negotiating process by their unfamiliarity with technical matters. Many might find great difficulties in supervising, regulating and enforcing the terms of agreements in blocks of sea far distant from their own territory. All those functions could be performed more competently by the Authority itself, which should be able to treat directly with any enterprise, public or private, that participated in mining operations in the area.

21. He suggested that, in order to increase the likelihood that the inevitable development of the Authority would be in the direction its members would wish, provision should be made for automatic periodic review and appraisal of its structure and evolution by an independent team of assessors appointed by its plenary body. The report of the assessors would not have any legal effect, but would focus attention on the way the Authority was responding to changing circumstances and needs.

22. An effective voice should be given in the Authority to non-governmental organizations representing both interests and opinion.

23. Mr. U MYO HTUN LYNN (Burma) said his delegation associated itself with developing and other countries in firmly supporting the principle that the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction, as well as the resources therein, should be the common heritage of mankind. In order to ensure that the common heritage of mankind did not become the common heritage of multinational corporations, all exploration and exploitation in the international sea-bed area should be properly controlled, if not carried out, by an international organization. The organization or Authority should possess very comprehensive functions and powers, including the power to explore and exploit. It could be left to the Authority itself to decide whether to exploit the international sea-bed area directly or through contractual arrangements.

24. The composition of the Authority should be subject to the principle of equitable geographical representation; no single State or group of States should have an entrenched position in any of its decision-making organs. Each member should have one vote.

25. The resources of the international sea-bed area should be controlled by the International Authority, which should have the right to determine how the benefits derived from exploitation were to be equitably distributed among all countries of the world.

26. The international sea-bed area should be used exclusively for peaceful purposes.

27. Mr. VILHJÁLMSSON (Iceland) said his delegation's position was based on its understanding that the essence of the Declaration of Principles was that the resources of the sea-bed beyond the limits of national jurisdiction should be exploited for the benefit of all mankind, but especially for the benefit of the developing countries. The pressures of technological development and the realities of the world economy, and the arguments put forward to support an authority not acceptable to most of the developing nations, were not politically decisive. The Authority should be strong, and should have the power to explore and exploit the resources of the sea-bed and to make contracts. Although he favoured machinery that would guarantee the rapid development of a rational exploitation of sea-bed resources, he would favour limited activity in the initial stage if it came to a choice between that and immediate extensive exploitation. He saw no reason why the Conference should not produce a package deal in which the interests of rational management and the wishes of the community of developing nations were both catered for.

28. According to the Declaration of Principles, the international régime to be established would apply to the sea-bed area beyond the limits of national jurisdiction. Support was growing for the establishment of economic zones up to 200 miles from the appropriate baselines. One group of States had important interests connected with the exploitation of sea-bed resources on their coastal shelves beyond that limit. The problem might be solved by some system of revenue-sharing. He stressed that the Declaration of Principles did not apply to the superjacent waters of the international sea-bed area. It was neither possible nor desirable that the international régime should apply to those waters. Fishing for semi-migratory, mi-

gratory and anadromous species outside national zones was closely linked with fishing for them inside those zones. Consequently, international co-operation for the conservation of those fisheries should be a subject of regional arrangements or even special international agreements. The factors to be taken into account in the negotiations on such agreements were not the same as those associated with the sea-bed régime and should not be discussed in the Committee.

29. Mr. ARSENIS (United Nations Conference on Trade and Development), presenting the three econometric studies prepared by UNCTAD, said he felt that they needed some introduction because they had been distributed rather late and some of them were not available in all the working languages. He proposed to explain the reasons for certain conclusions reached by UNCTAD on some of the items before the Committee.

30. Work on mineral production in UNCTAD went back many years in the context of commodity arrangements and more recently as a result of General Assembly resolution 2750 (XXV) and UNCTAD resolution 51 (III) in which the UNCTAD secretariat was invited to continue studies of particular commodities and to study measures necessary to avoid the adverse economic effects which the exploitation of the sea-bed might have on the prices of minerals exported primarily by developing countries. Econometric studies were labour-intensive, subject to serious technical difficulties and time-consuming. Three had been done so far—on cobalt, manganese and copper—and a fourth, on nickel, was in process of completion. The four had still to be integrated into a consistent whole, taking account of certain new conditions in the present world economy.

31. Starting with cobalt, he said that although the paper seemed technical and the model described rather complicated, the general framework was simple. It had been assumed that the demand for cobalt was essentially a function of the gross domestic product (GDP) of developed countries and of a weighted lagged price structure: in other words, both the price and the level of economic activity in the developed countries affected the demand level.

32. Concerning supply, two separate assumptions had been made. First, all producers except Zaire—which was the major producer—had been assumed to supply cobalt on the basis of a historical time trend. An assumption had also been made concerning support of cobalt prices in the United States, but that was a minor aspect of the model. It had been assumed that the supply from Zaire was an equilibrating factor and would be equal to the difference between total demand and total supply from other producers. Secondly, it had been assumed that prices were determined by factors related to the ratio of supply of cobalt by producers other than Zaire to total demand and the ratio of United States stocks to world demand.

33. The model had been tested against the historical behaviour of the commodity and found satisfactory and it had been projected forward on the basis of the assumptions concerning the GDP growth rate of the world economy, using primarily projections by the Organization for Economic Co-operation and Development (OECD) on the GDP of its member countries and projections by the LINK Project, an international endeavour, by national institutions under the auspices of the University of Pennsylvania in the United States, the International Monetary Fund and UNCTAD. On the basis of those assumptions the forward projection was a production growth rate of about 6.5 per cent and a consumption growth rate of about 6.3 per cent, with the price of cobalt projected forward to increase at 1.6 per cent per annum—the real price: namely, the price related to other commodity prices. The developing countries' earnings were projected at about \$240 million.

34. Those projections were all based on the assumption that there would be no sea-bed production.

35. On the assumption that sea-bed production would have begun by 1974, low, medium and high assumptions had been made concerning the growth rate of cobalt production from sea-bed mining, on the basis of an earlier report by the United Nations Secretariat. In the light of recent developments, however, it seemed that those assumptions were too optimistic in the short run and too pessimistic regarding the first five years of the 1980s, and that the preliminary results might exaggerate the short-term impact of sea-bed mining and underestimate the long-term impact on the production of similar commodities in the developing countries.

36. On the basis of the medium assumption that about 7 million metric tons would be extracted from the sea-bed by 1980, the model had been re-run to determine the impact of that additional supply on prices, total production and developing countries' export earnings. The results showed that sea-bed production would have a very small impact on the price of cobalt. Most of the adjustment would be effected through cut-backs in the production of land-based producers—primarily Zaire—and the developing countries' earnings would be reduced from an estimated \$240 million projected for 1980 in the absence of sea-bed production to \$184 million. However, the total gross income from sea-bed mining of cobalt would be about \$46 million, which would not be enough to compensate cobalt producers' losses or even compensate Zaire, which alone would lose about \$32 million.

37. With regard to the second study, manganese was a difficult commodity to put into a quantitative model because of the particular oligopolistic nature of the market and because prices played a very small part in demand. It had simply been assumed that the annual consumption was related to ferroalloy and steel production of consuming countries: in other words, demand was insensitive to price. Production of manganese ore had been assumed to depend on production capacity in the manganese ore industry; and in the long run the economic capacity of the manganese ore industry was supposed to be influenced by time lags in the price structure of manganese. The change in commercial stocks was determined by aggregate production, aggregate consumption, net imports from the socialist countries and changes in United States Government stocks. The price was determined by lagged commercial inventory and by United States Government stock changes. It was a complicated model, but basically what it meant was that demand depended on levels of activity in the steel industry. Supply was insensitive to price changes in the short run but sensitive to them in the long run. From year to year the price of ore was primarily determined by inventory changes in the world economy. Under similar assumptions used in the cobalt study concerning the GDP growth rate of developed countries and hypothetical assumptions concerning the rate of sea-bed production, the following projections had been made for 1980: without sea-bed mining, demand would increase by 5.8 per cent per annum, production would increase by 4.2 per cent per annum and there would be a price reduction of about 1.1 per cent per annum. The developing countries' export earnings would increase at about 3.1 per cent per annum, reflecting a combination of the increase in over-all demand and the decline in price.

38. On the medium assumption of manganese production from the sea-bed, land-based production would increase much less; there would be a cutback in production and the increase would be only 1.5 per cent. The impact on prices, however, would be rather limited—a projected decline from 1.5 to 1.1 per cent per annum. Developing countries' export earnings would decline to about 2 per cent per annum. The total loss to the developing countries would be about 30 per cent of export earnings from manganese ore.

39. He emphasized that those results depended critically on the assumptions in the model regarding supply behaviour of land-based producers. The developing countries' losses because

of increased supplies from the sea-bed would be about 50 per cent of the gross value from sea-bed production. As in the case of cobalt, gross revenue represented gross earnings without deduction for operating costs, depreciation, amortization and return on capital. The prospects of compensating the developing countries for their loss of export earnings solely from sea-bed manganese production did not seem very bright.

40. With regard to copper, the subject of the third study, a number of difficulties had been encountered in setting up a satisfactory model. UNCTAD had been involved in the problem since 1966. The basic difficulty was the existence of two markets which were not perfectly connected: the New York copper market, on which producer prices were fixed on the basis of medium-term targets, and the London Metal Exchange market, on which prices fluctuated considerably in the light of short-term availability and demand in the world economy. There was thus a great difference between assumptions of sea-bed production based on the New York and on the London market.

41. On the basis of the previous assumptions concerning the developed countries' GDP and the medium assumption concerning sea-bed mining, forward rates of 4.3 per cent per annum for production and 4 per cent per annum for consumption had been projected, with an increase in price of 3.5 per cent per annum for London and 2.6 per cent for New York—without sea-bed production.

42. Assuming supplies were extracted from the sea-bed, price increases would be reduced to 2.2 per cent for London and to 1 per cent for New York.

43. Another difficulty was allocating potential losses between developed and developing copper-producing countries. The results of studies showed a reduction in developing countries' export earnings by \$194 million—about 60 per cent of gross earnings projected forward from sea-bed mining. It was doubtful, therefore, that the gross sea-bed revenue could fully compensate the developing producer countries' potential losses.

44. That, roughly, was the substance of the papers submitted by UNCTAD.

45. He stressed that the studies were really hypothetical projections on the basis of many assumptions. The results that were valid, irrespective of assumptions concerning the rate of growth of sea-bed mining or of activity in developing countries, were the following: first, sea-bed mining would bring direct benefits to consumers of the minerals concerned, who were by and large the mineral-using industries in the developed countries. Secondly, the main consequences of sea-bed production for land-based producers of the minerals concerned would be that total export earnings would grow less rapidly than otherwise and might even decline. Thirdly, the impact of sea-bed production would probably be particularly adverse for developing producer countries because they depended more on the minerals concerned for export earnings and government revenue than did the developed producer countries. Fourthly, the compensatory approach, namely to compensate the developing producer countries affected by sea-bed production for the estimated adverse impact on export earnings was unworkable because the International Sea-Bed Authority would not have enough funds if they were confined to the net revenue from sea-bed exploitation. Fifthly, if the developing producer countries were to be compensated for potential losses and adequate revenues became available to other developing countries, firm preventive arrangements would have to be made in advance of production of sea-bed minerals, arrangements which could include either commitments by developed countries to make good the shortfall between export earnings of the proposed International Authority and the amount needed for compensation, or the establishment of a floor price for mining products from sea-bed production.

46. If he had any particular message, it would be the following: sea-bed production would add new supplies to the world; it would be very difficult to settle the organization of sea-bed production satisfactorily without taking account of land production, which would provide the bulk of resources for years to come, and it would be difficult to reach an arrangement without having solved the organization of production on land. As a result of the Declaration on the Establishment of a New Economic Order made by the sixth special session of the United Nations General Assembly,² the UNCTAD secretariat was working on the possibility of a comprehensive commodity approach which would include a number of commodities and would take account of sea and land sources of supply.

47. Mr. RATINER (United States of America) said that the UNCTAD reports under discussion were important because many of the proposals before the Committee were motivated by a concern for the possible economic implications of sea-bed production. He urged a full discussion of that issue during the Conference and hoped that the UNCTAD representative's statement could be reproduced *in extenso* in the records, so that representatives could study and comment on it.

48. His delegation had difficulty with many of the assumptions in the reports—for example that it was mainly the mineral-using industries in developed countries that would benefit from lower prices. He questioned that statement and said that the users of the metal in manganese nodules were often the developing countries. His delegation planned to study the UNCTAD reports with care in order to be responsive on that topic at a later time.

49. The CHAIRMAN said that if there were no objections, he would take it that the Committee was in favour of the reproduction *in extenso* of the statement by the UNCTAD representative.

It was so decided.

50. Mr. ARSENIS (United Nations Conference on Trade and Development), replying to the United States representative, said that his conclusions did not depend on particular quantitative assumptions in the econometric models, but on the fact that with the addition of the new sources of supply to land-based supplies, prices would tend to fall. If the demand elasticity were less than one, total revenue of all producers would be less; if demand was price-elastic, total revenues would be more than before.

51. The problem was that the additional gross revenue of sea-bed mining might not be enough to compensate for the loss of profit of land producers.

52. He agreed that the technical studies were very tentative: no figure was proposed for a possible shortfall in 1980–1985; only the direction was indicated, and whether it would be minus or plus.

53. He also thanked the United States representative for pointing out that developing countries were becoming metal consumers: that was reflected in the studies. Moreover, special care had been taken to find out how much would go to the developing countries and it had been determined that the great bulk of metals and raw materials were still directed towards the developed countries. 3/5/83

54. Mr. ILLANES (Chile) said that the UNCTAD representative's statement would help representatives to understand the technical documents and their full effects on the Committee's work. He would like further information on the relative advantages of the two methods—preventive and compensatory—of dealing with the adverse effects of exploitation of sea-bed minerals on the developing countries' economies, with specific examples of how a fall in prices for land-produced minerals in the developing countries could be prevented. Could the UNCTAD representative also elaborate on his statement to the plenary

meeting that the preventive method would require a strong international authority with broad powers?

55. Mr. ARSENIS (United Nations Conference on Trade and Development) said that, assuming that the net revenue to the proposed authority would be hardly enough to compensate the developing country producers for loss on export earnings, the question arose as to how to raise the financial resources to compensate the developing producers fully and have enough funds for the least developed among the developing countries, and the land-locked and other developing countries.

56. There were two alternative approaches. The first was to obtain the additional resources from the developed consuming countries. As he had said, lower prices would cause a consumer surplus. If the gains were to be distributed primarily to the poor countries, there was a case for transferring the consumer surplus back to the developing countries, which would yield enough both to compensate the developing producer countries and help to finance other developing countries. That would have to be done by lump sum transfers, which were difficult to administer and would need a strong international authority. The problem was twofold: could international agreement be obtained in principle that in the event of a consumer surplus, it would be transferred from the consumer to the producing and other developing countries? Would there be agreement to a transfer, not by individual commitment but by automatic arrangement? In view of the difficulty of implementation many Governments had opted for reallocation and redistribution of income through market arrangements.

57. The second approach was for an international commodity price agreed by negotiation between consumers and producers based on calculation of reasonable returns to a reasonably efficient land producer. In that case, developing producing countries would not need compensation and all the net revenue of the International Authority would be available to finance development in other developing countries. The difficulty was that in the short run, a support or floor price would need financing and the operation of a buffer stock, while in the long run it would require a commodity agreement—and international commodity agreements had been very difficult to achieve in the past.

58. If the international community was ready to accept a comprehensive commodity strategy, including commodity agreements, stabilizing of prices and distribution and supply, that would be the more satisfactory solution. Irrespective of the approach, it was clear that the proposed International Authority would be involved. With the preventive approach, it would participate in any commodity agreement to stabilize prices, operate buffer stocks and distribute supply: it must therefore be a strong entity with negotiating power. With the compensatory approach, the International Authority would have to examine questions and regulations concerning production and processing and so forth. He had stressed, at the 42nd plenary meeting, that under the licensing system, the national companies with know-how would avail themselves of the possibilities. It seemed, therefore, that whichever the approach, the International Authority needed wide economic powers to deal with the problem.

59. Mr. DE SOTO (Peru) said that the Committee could discuss the reports prepared by UNCTAD in detail after members had had an opportunity of studying the statement made by the representative of that organization.

60. He drew attention to a recent book, reviewed by the magazine *The Economist*, in which the author had defended the principles of economic growth. The magazine seemed to disagree with the forecast by the Club of Rome regarding the future shortage of minerals. It stated that there would soon be vast technological progress in mineral recycling and production techniques. It went on to quote the International Bank for Reconstruction and Development to the effect that there would

² Resolution 3201 (S-VI).

be a large annual supply of manganese and that the current trend would lead to an increase in the supply of minerals and a decrease in prices in the second half of the 1970s and in the early 1980s. That forecast boded ill for the mineral-producing developing countries. In its report on the effects of possible exploitation of the sea-bed on the earnings of developing countries from copper exports, the UNCTAD secretariat stated that the effects of possible exploitation of the sea-bed on the copper market and on the export earnings of the developing countries would depend on the intensity of such exploitation and that that intensity, in its turn, would depend firstly on the measures taken by national or international authorities to regulate such exploitation, and secondly on the relationship between the costs of exploitation and the market prices for the metals concerned. (TD/B/484, para. 18.) That information was also based on two reports of the Secretary-General (A/AC.1/138/36 and A/CONF.62/25) in which it was stated that there were a number of reasons why it was difficult to compare the relative costs of sea-bed and land production. It appeared that a great many of the possible dangers were unknown, because much of the information was still secret and based on a series of imponderables.

61. He asked the representative of UNCTAD what would be the influence or repercussions of progress in exploitation techniques on normal sea-bed production. Would it increase production and have a greater impact on prices from land-based production?

62. Mr. ARSENIS (United Nations Conference on Trade and Development) said that he could not answer that question fully because no information was available and the technology was changing rapidly. The international community might therefore wish to adopt a flexible approach in the light of technological progress. While such progress would be welcomed, no one wanted sudden disruptions in the world market; an orderly introduction of technology and an equal distribution of the resulting gains was preferable.

63. When referring to costs, the UNCTAD secretariat was referring to shadow prices—rather than actual prices—which reflected the real situation in each State. In developing countries, prices did not reflect the real opportunity cost. For example, in Zambia the opportunity cost of a miner was nil. Whatever he produced would be a net gain for that country. On the other hand, in a developed country the opportunity cost of a similar worker might be as high as his salary. The cost used should therefore be based on shadow prices.

64. Mr. THOMPSON FLORES (Brazil) said that from what the representative of UNCTAD had said, it was undeniable that sea-bed production implied a decrease in the income of land-based producers. Furthermore, compensation machinery would be difficult to establish and maintain and any progress in technology would increase the existing gap and make compensation even more difficult. His delegation believed that a system of compensation would be unjust, since the Authority's money, which ought to be used in the interest of all mankind, would be used to compensate only some developing countries. His delegation also could not accept the argument that in the long run benefits would accrue only to the consumer of the finished product.

65. With respect to the extent of the Authority's power to act effectively in global commodity arrangements, it appeared that the Authority would have to regulate all markets and participate in the activities in association with those extracting and marketing the minerals, especially since many of the entities that would be engaged in exploitation were based on vertical integration.

66. Mr. VARADAN (India) said that as a major producer of manganese and as a developing country which imported copper and other minerals, India was vitally concerned with the issues raised. The international community did not appear

to have two alternatives, as the representative of UNCTAD had said, since it would have to sustain prices because the evidence showed that the mineral resources of the oceans were vast. The point in doubt was how much of those resources were economically exploitable. As soon as technological progress made it possible to exploit those resources, a free market situation would bring about the replacement of land-based production by sea-bed production. The Authority should therefore be given wide powers to maintain prices, because if prices were allowed to fall compensation would have to be sought for the developing countries. The authority must accordingly have the power to regulate production and prices and to generate funds while taking advantage of technological progress. That was particularly important because in most commodities, *per capita* consumption was much lower in the developing countries.

67. Mr. ALLOUANE (Algeria) said that all the documents available suggested that the benefits to be acquired from sea-bed production would not serve to compensate the land-based producers. Those reports, however, did not suggest the sustaining of prices as a preventive measure and he therefore asked the representative of UNCTAD to comment on a possible fund, to be administered by the Authority, for guaranteeing prices.

68. Furthermore, the representative of UNCTAD had said that additional consumption by consumer countries would benefit the developing countries. His delegation wondered in what way a consumer surplus would benefit developing countries.

69. Mr. ARSENIS (United Nations Conference on Trade and Development) said that the UNCTAD secretariat was largely in agreement with what the representative of India had said.

70. He pointed out to the representative of Algeria that the UNCTAD reports did in fact emphasize a preventive approach, i.e. guaranteed prices, which meant that prices should not be allowed to fall below an internationally accepted level. The UNCTAD secretariat had felt, however, that it should inform the Committee of possible alternatives. While it felt that the price-support approach was preferable, it had to point out that that had not been agreed upon, in principle, by the international community. That approach, however, had gained political momentum as a result of the sixth special session of the General Assembly, but there had been reservations expressed on that aspect of the Declaration on the Establishment of a New International Economic Order.

71. He had not elaborated on the comprehensive commodity approach because it had not as yet been discussed by UNCTAD members but would be taken up in August at the fourteenth session of the Trade and Development Board.

72. In its report to the sixth special session of the General Assembly,³ UNCTAD had indicated that the present crisis in the developing countries was the result of a drastic increase in prices of essential imports which indicated a failure in areas of commodity trading. A piecemeal approach would not help to solve those problems. There had to be equitable and remunerative prices. Many developing countries would become importers and would thus obtain some gains in the form of lower prices, but that was true of one commodity only. The solution was to enable the metal-importing developing countries to obtain gains through reasonable prices, and in that connexion, price fixing of slated commodities would not be enough. On the assumption that an equal price relationship was the only solution to the problem, UNCTAD envisaged a programme for all primary commodities in order to improve terms of trade. That approach had not been spelt out in the reports because there was significant resistance from delegations which felt that it would create an element of world inefficiency.

³ *Problems of raw materials and development* (TD/B/488).

73. There was a new awareness that neglect of commodity trade was not in the long-term interest of consuming nations and the Secretariat of OECD, in discussing inflation in its member States, had stated that the current crisis showed that prices which remained too low for too long endangered future supplies in the long run.

74. With respect to the possibilities of long-term commodity arrangements, both producers and consumers felt that stable

prices would be of benefit to all and the Secretary-General of UNCTAD had proposed a broad commodity approach to stabilize prices at an equitable and remunerative level.

75. The CHAIRMAN thanked the representative of UNCTAD for appearing before the Committee and said that members were gratified to learn that a representative of that organization would be present throughout the session.

The meeting rose at 5.50 p.m.

7th meeting

Wednesday, 17 July 1974, at 10.05 a.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Statements on the international régime and machinery (continued)

1. Mr. TARZI (Afghanistan) observed that the convening of the Third United Nations Conference on the Law of the Sea marked the beginning of a new era in the history of international law and that, for the first time, the international community was focusing its attention on the common heritage of mankind.

2. The international régime should be designed in such a way that no State would be able to extend its sovereignty unilaterally over any part of the international area and that all States could participate in the exploration and exploitation of it on an equal footing. Land-locked States should have the right of free access to the sea, a principle which should be embodied in the future convention.

3. In addition, the economic viability of the international zone must be ensured, and the concept of a common heritage would remain valid only if the zone was sufficiently vast. An International Authority with broad powers must be established to apply that concept. To uphold the principle of the equality of all States, the land-locked States should be fairly represented in all the organs of the Authority, and no State should be given preferential rights, such as the right of veto. Sufficient profits should accrue to the Authority for the developing States to be able to derive real benefit from the revenues earned from its activities. Since the situation of the land-locked and other geographically disadvantaged States was one of the principal factors responsible for the increase in the prices of their imports and exports and was holding back their economic development, his delegation believed that the distribution of benefits should take account of the need to improve the level of living of the peoples in developing countries. In addition, the more advanced States should make their technology accessible to the international community. It should be stressed that the exploration of the area and the exploitation of its raw materials should not have any detrimental effect on the production of the developing States and that the international area should be reserved exclusively for peaceful purposes.

4. Mr. BOAVIDA (Portugal), speaking with reference to the status, scope and basic provisions of the international régime, said that his delegation endorsed all the principles set forth in General Assembly resolution 2749 (XXV) and would like to see them reflected in a universally ratified and implemented treaty. The international area should be reserved exclusively for peaceful purposes, the exploration of the area and the exploitation of its resources should be carried on for the benefit of mankind as a whole, and due account should be taken of the interests and needs of developing countries in distributing the benefits derived from the exploitation of the area among States.

5. With regard to the limits of the area, Portugal agreed with the United Kingdom that, under existing international law, a coastal State already had sovereign rights over the resources of the continental margin. It believed that coastal States should also have the right to exercise their jurisdiction over a 200-nautical-mile economic zone, which they would be entitled to explore and in which they could exploit all living and non-living resources, provided that they recognized the freedom of navigation, overflight and the right to lay submarine cables and pipelines.

6. For that reason, his delegation was prepared to support variant D of article 1 as it appeared in the report of Sub-Committee I of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (A/9021 and Corr.1 and 3, vol. II, p. 51). It also maintained that for the purpose of the convention, the outer edge of the continental margin should be in the 4,000-metre isobath.

7. With regard to the structure, functions and powers of the future international machinery, he advocated the earliest possible establishment of a powerful International Authority within which the contracting parties to the convention would jointly and democratically manage the international sea-bed area and its resources on the basis of equality and mutual benefits. The Authority should discharge its regulatory duties for the exclusive benefit of the peoples of all countries and should not only systematically develop and manage the area, but also ensure the equitable sharing by all States of the benefits derived from the exploitation of its resources, taking into particular consideration the interests and needs of the developing countries. The Authority should be vested with such legal capacity as might be necessary for the full exercise of its functions and the fulfilment of its purposes. It should consist of an assembly comprising representatives of all the contracting States, which would be the supreme organ, exercising control over all the activities carried on by the other organs; a council with a more restricted membership which should formulate policies and submit them to the assembly; an enterprise entrusted with the exploitation of the area; and, lastly, a secretariat and a tribunal.

8. The convention should also include a provision declaring that the exploration and exploitation of the area should be undertaken in such a manner as to ensure the conservation and optimum utilization of its resources and the regulation of production. Fluctuations in the prices of raw materials should be avoided as far as possible, since they could adversely affect the exports of developing countries.

9. His delegation endorsed the provision included in the draft convention which would give to the State of historical and archaeological origin preferential rights over all objects of an

archaeological and historical nature found in the international area.

10. Finally, his delegation attached the greatest importance to the establishment of a compulsory procedure for the settlement of any disputes that might result from the implementation of the provisions of the new international régime.

11. Mr. SEPULVEDA (Mexico) observed that the first important thing that should be done was to determine the limits of the area to which the sea-bed régime would apply and over which the international organization would exercise its authority. His delegation believed that it would be desirable and timely for the Committee to decide now, in unambiguous terms, in favour of an international sea-bed area having as its limit the outer lower edge of the continental margin which adjoined the abyssal plains or, when that edge was at a distance of less than 200 miles from the coast, up to that distance. A prompt decision on that issue would facilitate the work of the Second Committee.

12. Mexico also deemed it necessary to consider two matters that were of great importance to the sea-bed régime. First, it was essential to state to what part of the marine resources the régime would apply and, secondly, it was clear that the size of those resources would depend on the kind of powers given to the Authority.

13. As far as the first point was concerned, his delegation regarded as inadequate a system restricted to the exploration of the sea-bed and ocean floor and the exploitation of their minerals and other non-living resources. Such a system would undermine the very spirit of the future international régime and would be very detrimental to the content and scope of the concept of a common heritage. The Committee should legislate in a forward-looking way; that is to say, in preparing rules, it should take as a basis the widest possible array of hypothetical cases.

14. He had listened with interest to the argument advanced by Mrs. Mann Borgese of the International Ocean Institute at the 3rd meeting. He believed that the régime of the sea-bed and that of the superjacent waters should be closely linked. That meant that the competent organization should be entrusted with the management and supervision of the renewable and non-renewable resources of the sea-bed and also of those in the water column.

15. A formula linking the régime governing international waters with that governing the sea-bed was the only feasible way of establishing machinery to regulate the various ways of using and exploiting ocean space. That formula would make it possible to establish a harmonious balance between the different uses of the sea, which were frequently divergent or conflicting. Over-all regulation would enable the organization responsible to determine how the international community could derive the maximum benefits from the resources of the sea.

16. That objective could not be attained unless the Authority was given broad powers. The establishment of a powerful central body was an essential element in the list of provisions that the Committee should adopt. Mexico was not in favour of a feeble body that would passively watch while the wealth of the sea-bed was distributed among the advanced countries. The developing countries wanted a fair share of the benefits to be derived from the sea, and that could only be guaranteed by a strong Authority.

17. The Authority should consist of a non-discriminatory and democratic plenary assembly, which would formulate general policy to govern the activities of the Authority; a council with restricted membership but which would be representative of the various interests at stake, which would carry out the policy approved by the assembly and supervise its implementation; and, finally, an enterprise, which would be responsible for all the technical, industrial and commercial activities. The idea of an enterprise, which had been advanced by Mexico and

12 other Latin America countries in document A/AC.138/49,¹ was intended to establish the straightforward principle that the Authority should itself undertake the exploration of the area and the exploitation of its resources. Should it require technical or financial resources, it could conclude service contracts or enter into partnership with mixed companies; if it decided upon the latter, its contribution could be the resources to be exploited. The international machinery would naturally retain control in all cases over mixed companies or the activities of entities which had signed such contracts.

18. One of the important features of the Latin American draft was that it did not enable the Authority to grant licences or concessions for the exploration or exploitation of the area. The reason was perfectly simple: any licensing system conferred ownership of the resources extracted on the operator, with the result that part of the common heritage was diverted into other hands and the Authority was deprived of its marketing functions, with the resulting loss of its main source of revenue and benefits.

19. Mr. RATNER (United States of America) pointed out that he had refrained from raising a point of order when the representative of Mexico had touched on issues that had nothing to do with the items on the agenda of the First Committee. He thought it important, however, to draw attention to the fact that the First Committee must deal essentially with the international régime to apply to the sea-bed and ocean floor beyond the limits of national jurisdiction. If members of the Committee continued to raise questions that were not relevant, either during the work of the Committee or in the unofficial meetings, his delegation would be obliged to raise points of order. The mandate of the First Committee was not to regulate activities carried out in the waters superjacent to the sea-bed.

20. The CHAIRMAN appealed to delegations to show moderation. Although marine issues were closely interlinked, he asked delegations to try to touch on only the points that were of direct interest to the Committee. He hoped there would be no need to raise points of order and that the attention of the Committee would not be diverted from the task it had been given.

21. Mr. MAKONNEN (Ethiopia) said that the proliferation of alternative texts and square brackets in the draft articles on the régime and machinery (*ibid.*, p. 51) revealed the existence of conflicts between the interests of coastal States and those of flag States.

22. Both the Committee and the whole Conference must approach their work on the basis of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (resolution 2749 (XXV)), and hence of the concept of the common heritage. If that concept was to be truly meaningful, it must apply to an area that was not deprived of presently known and realizable resources, including hydrocarbons. It was in the machinery that the land-locked States and others would have the greatest stake with regard to drawing on the resources of the area. He pointed out that many coastal States bordered on semi-closed seas or had short coastlines and therefore had very little to gain from an economic zone 200 miles wide. Apart from the question of availability of appreciable resources, the 25 African coastal States that were members of the Organization of African Unity, including his own, had coastlines between 22 and 900 nautical miles long; that could not be compared with the 10,000 nautical miles or more coastline of the five major coastal States. Consequently, the adoption of an extensive resource jurisdiction, be it on the basis of the concept of a continental shelf or economic zone, should not be at the expense of the common heritage. His delegation would support the claim for exclusive coastal State resource jurisdiction.

¹ Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21, annex I, sect. 8.

tion provided there were regional arrangements for all States to exploit some of the resources in the area. The convention must take that point into account; the States concerned could then make more detailed arrangements. The Declaration of the Organization of African Unity (A/CONF.62/33) merited the Committee's attention in that respect. If the international area could not begin from the outer limit of the 200-mile zone, at least some of the revenues derived by the coastal States from that part beyond the 200-mile limit should be transferred to the International Authority, whose creation would then be justified.

23. As for the international machinery, his delegation saw no difficulty in the establishment of the principal organs proposed in the draft articles, provided that all parties to the convention were duly represented and that there would be no veto or weighted voting system in the decision-making process. It was impossible to say whether one system of exploitation or another was the only way to apply the concept of the common heritage. The two main approaches—an enterprise and licences—should be combined. The Authority could choose from several systems and employ one or another according to circumstances.

24. In view of the likelihood of conflicts of interest or overlapping competences, parties to the future convention should have recourse to a forum for the settlement of disputes in which all could have full faith.

25. Mr. LYSAGHT (Ireland) said the fundamental premise of his Government's approach to the matters within the purview of the Committee was that the resources of the sea-bed should be used to narrow the existing economic gap between the richer and the poorer nations. His delegation was willing to consider any proposal which seemed likely to achieve that end. It seemed advisable to vest the power of control over the utilization of resources in a body whose composition included an assembly, in which all States would be represented, and a council of more limited membership, protected from domination by the industrially powerful nations. Although divergent interests should be represented in the council, those of the poorer countries should be given additional weighting. Similarly, the bulk of the profits earned by the International Authority should be distributed among the economically disadvantaged countries. The proposal submitted by the United Republic of Tanzania² was very interesting in that respect; population and *per capita* income were the main factors to be taken into account. Whatever system of distribution was decided upon, it should be based on objective criteria defined in the convention. In order to ensure maximum profits, the authority must operate efficiently and must be free to choose the most suitable form of exploitation. In particular, it should be free to license companies directly without the intervention of States.

26. It was essential to distinguish the Authority's commercial functions from its regulatory power in the fight against pollution and its social function of training personnel for the transfer of technology, to avoid its becoming an inefficient bureaucratic apparatus.

27. If the Authority was going to have to operate initially by means of some form of partnership arrangements with companies from technologically advanced countries, greater confidence must be generated among those companies so as to ensure that they would be willing to co-operate with the Authority on reasonable terms. It was therefore essential to ensure security of investment and provide for the compulsory settlement of disputes.

28. The representative of the United Nations Conference on Trade and Development at the 6th meeting had dispelled any doubts there might have been concerning the need to regulate the marketing of sea-bed products in the interests of primary-

producing countries, but to solve the problem of the effects of sea-bed production on the economies of those countries, there would have to be a general stabilization of commodity prices. Such a solution could not be achieved within the limited context of the Authority.

29. Mr. AL-IBRAHIM (Kuwait) said that the Conference should be able to start taking decisions, because it had numerous studies on international machinery and the economic implications of sea-bed exploitation available to it and a number of draft treaty articles before it. Moreover, the developing countries were united on the main issues.

30. The régime was an integral whole, and the international machinery was an inseparable part of it. The international convention that would bring the régime into being should be open to all States, whether or not they were Members of the United Nations. The convention should prohibit reservations that were incompatible with its object and purpose. There was clearly a conflict between the approach of the industrially advanced countries and that of the developing countries. The major maritime powers insisted on having weighted voting in the council and demanded that the Authority should be a licensing body without any operational functions. His delegation believed that the International Authority should have comprehensive powers which it could exercise immediately and other powers that it could use subsequently, once it was endowed with the necessary material and human resources. Its functions should include the organization, administration, control and co-ordination of all operations relating to the development of sea-bed resources. It also had a major role to play in the field of training and transfer of technology; that would enable it to fight against the monopoly position which the multinational corporations from the developed countries still enjoyed.

31. The Authority should consist of an assembly, a council and a secretariat. The assembly should be the main legislative body and supreme policy-making organ. It would be responsible for seeing that the resources of the sea-bed were exploited as effectively as possible and shared equitably according to definite norms that would translate into reality the concept of the common heritage of mankind. The council would be the executive body and would act under the control and guidance of the assembly. It would be competent to grant licences, to set and collect fees, and to distribute benefits equitably. The secretariat should be so recruited as to secure the highest standards of efficiency, competence and integrity and to ensure equitable geographical representation.

32. Studies recently published by the Secretariat of the United Nations and by some of the specialized agencies and the statement made by the representative of the United Nations Conference on Trade and Development had shown clearly that sea-bed exploitation would have an adverse effect on the economy of some of the developing countries unless it was properly regulated. His delegation was firmly convinced that only an International Authority with comprehensive powers was capable of dealing with that problem on a long-term basis. Such an Authority would ensure rational exploitation and would prevent waste and mismanagement. It should establish an order of priority for exploitation based on the requirements of world development, taking into account the special situation of developing countries that produced non-renewable minerals.

33. His delegation hoped that it would be possible to reach agreement on those major issues despite existing differences. The viewpoint of the developing countries was a just one and must be accepted. His delegation hoped that, after constructive negotiations, a consensus decision would be taken without a vote.

34. Mr. WARIOBA (United Republic of Tanzania) said that he hoped that the Conference would not make the mistakes that had led to the many criticisms of the Treaty of Versailles; no country must consider that its interests had been harmed.

² *Ibid.*, sect. I.

The Conference must begin with political decisions on the fundamental questions. It must make its intentions clear and only embark upon the technical work when everyone knew what they were aiming at.

35. The Committee had two basic issues to resolve: who should exploit the area, and the structure, powers and functions of the international machinery.

36. With regard to the first issue, there was inherent in it the question of who owned the area. The reply of course was that it was jointly owned by all mankind. History had fully demonstrated that in order to guarantee that wealth produced from resources went back to its lawful owner, that owner must himself have full control of the means of production. A licensing system did not guarantee the participation of the owner in the profits derived from the exploitation. That did not mean that entities outside the Authority should not participate in the activities in the international area, because it would be necessary to call on them. They should not however be allowed to determine the fate of the common heritage as they had ruled the economies of developing countries. In short, the Authority must itself exploit the area, although it might have to do so with the co-operation of other entities, but in that case, their role must be directly controlled by it.

37. Companies had always been the weapons of colonialism, imperialism, neo-colonialism and exploitation. East Africa knew that from experience, because the German East Africa Company and the British East Africa Company had been the major instruments of foreign rule in that region. It was again through such companies that the third world was being drained of its natural and human resources. Every effort must be made to see that that situation was not perpetuated.

38. The Conference could create either a machinery which would represent and promote the interests of mankind as a whole or one that would perpetuate, if not intensify, the oppression of the vast majority of the world community by a few technologically advanced countries.

39. A system of privilege for the super-Powers or the technically advanced countries was not in the interest of mankind, let alone of lasting peace. A system of inequitable geographical representation could never be justified once it had been agreed that all peoples of the world had equal rights in respect to the international area. The same applied to the voting system.

40. If the aim was to ensure that all the activities in the area benefited mankind as a whole, the entire world community must be fully involved in the decision-making mechanism—hence the need to ensure that in the international institutions and their organs, all peoples were equitably represented, the decision-making procedures were democratic and that the Authority had strong and comprehensive powers. The machinery should have an assembly of representatives from all States, where the policy decisions would be made, a council, in which all regions would be equitably represented and where the procedures would observe the equality of all, other specialized organs to deal with various technical matters, such as the enterprise, a secretariat and a tribunal for the peaceful settlement of disputes.

41. His delegation had not found it necessary at the moment to go into the details of subsidiary issues because the fundamental principles must first be agreed upon.

42. Mr. McLOUGHLIN (Fiji) said that his delegation had already expressed its views on the structure and composition of the International Authority, by which it meant the executive organ, and would not repeat them. It unreservedly supported the principle of an authority which was itself empowered to explore and exploit the resources of the international area, but only when it had the necessary financial means; for the moment, it could undertake operations in association with States or groups of States or consortia, which did not exclude the possibility of its participation in joint enterprises on a non-

contributory basis at any time. His delegation would be in favour of the conclusion of work contract agreements under which the Authority would retain the ownership of the resources of the area and the enterprises, whether public or private, would be allowed to exploit particular sectors in exchange for part of the resources obtained from them, the rest reverting to the Authority either in kind or in cash.

43. The Authority should decide whether it or the enterprise concerned were to be responsible for marketing. The important point was the control exercised by the Authority over the production and sharing out of the resources for the benefit of the whole of mankind, particularly the developing countries. The principle of control was applied jointly for production on land and offshore, and there was no reason why it should not also be applied for the sea-bed. Care must be taken to avoid both wasteful over-production to the detriment of the conventional producer and unnecessary underproduction to the detriment of the consumer. In other words, the exploitation of the resources of the sea-bed should not be used to bring down the prices of products obtained from the land, because of the detrimental effect of such a procedure on the developing countries, whose national income, already heavily burdened by the high cost of their imports of manufactures, was entirely dependent on income from commodities. It was well known that, during the past few years, prices to the consumer had soared while the prices obtained by producers had remained static. If the Authority controlled production, it should be able to ensure that small countries did not suffer from such fluctuations. The producer must naturally receive his share of the profits; the same was true of countries that were poor in natural resources: they should not pay more than was necessary for the energy and manufactured products they needed. For the moment, those questions were outside the competence of the Authority, but it was an extremely important problem and a solution must be found to it.

44. If the Authority decided, in the exercise of its powers of control, to increase or to reduce production when necessary, it must give the reasons for such action, and in cases of disagreement, the parties concerned should be entitled to request the arbitration of a tribunal established for that purpose.

45. Mr. Soo Gil PARK (Republic of Korea) said that, in order to give full effect to the common heritage concept, the international régime must be established according to the following principles, about which his delegation was happy to see that a consensus appeared to be emerging: first, the international sea-bed and its mineral resources should be designated the common heritage of mankind, and their exploitation should benefit all countries; secondly, no country should be allowed to appropriate any part of the sea-bed and all countries, including the land-locked and geographically disadvantaged countries, should have access to the area; thirdly, benefits derived from the exploitation of the area and its resources should be distributed equitably among nations, taking into consideration the particular needs of the developing countries.

46. The régime should apply only within the limits of the area and it should not affect the legal status of the high sea and the air space above it. The proposals for an all-embracing régime for the ocean space as a whole would have less chance of general acceptance because of the various questions such a régime involved, which were too complex to be effectively solved.

47. There seemed to be general agreement that the régime should be established by a universal convention setting out basic principles, which would be supplemented by detailed regulations. His delegation thought that such a procedure was necessary, so that every country could know exactly what were the conditions and the possibilities for the exploitation of the sea, and the international community could at last possess stable legal rules.

48. In view of the possible effects of the mining of the sea-bed, adequate safeguards must be provided to prevent abuse of the marine environment and to establish the duties and obligations of States with regard to any damage caused.

49. Freedom of scientific research in the international area should be encouraged for the benefit of mankind as a whole. There must be a more exact definition of the term "scientific research" in order to avoid the problems posed by different interpretations.

50. With regard to the functions of the International Authority, and in particular the decision-making process, his delegation was in favour of the principle of equal votes, with no State having special privileges such as that of veto and no derogation from the principle of the sovereign equality of States. The developing countries should not only share in the benefits derived from the exploitation of the resources of the international area but also participate effectively in all aspects of the exploration and management of the common heritage. In that connexion, the proposal made by the Latin American countries in document A/AC.138/49 merited serious consideration. That proposal stated that the International Authority would engage in its own exploration and exploitation activities but would also be able to avail itself of natural or juridical, public or private, national or international persons through either a system of contracts or the establishment of joint ventures. The Tanzanian draft proposal, according to which the International Authority would be empowered to explore and exploit the resources either by its own means or by issuing licences to individuals or groups, juridical or natural persons, under the sponsorship of its members, seemed to strike a reasonable balance between the licensing system of the developed nations and the enterprise system of the developing nations, and might well provide the basis for a compromise. It was also necessary to ensure a reasonable return on investment, in order to provide incentives for exploitation activities.

51. Finally, in view of the adverse effects which the exploitation of the international area might have on the prices of land-produced minerals, the International Authority should be empowered to control production in such a manner as to mitigate the negative effects on the development of the economies of the developing nations that were exporters of raw materials.

52. Mr. KHARAS (Pakistan) said that the concept of the common heritage of mankind should not be limited by restrictive interpretations for the benefit of a single State or group of States. The task of the Committee was to devise an appropriate international régime and machinery to ensure that the resources of the area would be exploited for the benefit of all mankind, and in particular, for the developing countries. Much remained to be done in that connexion, and the process of evaluation of proposals and negotiations, which must precede decisions, still lay ahead.

53. He reminded the Committee of the important decisions taken by the General Assembly at its sixth special session in the Declaration on the Establishment of a New International Economic Order³ on which the new international economic order was to be based. The General Assembly had recognized that the prosperity of the international community as a whole depended on that of its constituent parts, that the interests of developed countries could no longer be isolated from those of the developing countries and that there was a close interrelationship between the prosperity of the former and the development of the latter. All countries, and particularly the developed countries, must take a comprehensive view of the international economy and lay greater stress on long-term goals that need not, at all times, coincide with short-term gains. It was in that spirit that his delegation approached the concept of the common heritage of mankind and recognized the need to work for the following goals: maximum exploitation of ocean re-

sources; minimization of the adverse impact of nodule mining on the exports of mineral-producing developing countries; attainment of the highest possible revenues for the future International Authority; and preservation of the marine environment and conservation of ocean resources. It was apparent that all those objectives were not always mutually compatible and that an acceptable order of priorities must be established, taking into consideration all relevant factors. A balance would have to be struck between the desire of some to undertake unbridled exploitation of ocean resources and the imperatives of equity and optimum economic exploitation of those resources, which would necessitate a régime of controls.

54. His delegation therefore took the view that the rational development of ocean resources could be ensured only through the establishment of a strong régime governing the international area and an authority with adequate powers and machinery to give effect to that régime. It favoured the treatment of the ocean space beyond national jurisdiction as a single entity, in which no distinction was made between living and non-living resources with regard to the regulation of their exploitation and conservation and to the distribution of benefits derived from them. The new international régime should encompass the whole ocean space beyond the limits of national jurisdiction and all activities related thereto.

55. The imperatives of equitable distribution and optimum exploitation of the long-term economic interests of the whole international community would necessitate the direct control of such activities by the future International Authority, despite the organizational, financial and technological problems that would have to be overcome at the initial stages. In fact, during the first stages, the Authority should be provided with the necessary flexibility to tide over the financial and technological difficulties. As long as its direct control over the exploitation and distribution of resources was ensured, it should be able to employ any methods it considered suitable.

56. As for the international machinery, his delegation was, like other delegations, firmly of the view that it should be based on the principle of sovereign equality and equitable geographical distribution. It should be vested with comprehensive powers to deal with the exploration of the area and the exploitation of its resources, the equitable distribution of benefits derived therefrom, bearing in mind the special needs of the developing countries, the conservation of the marine environment and the regulation of the conduct of scientific research in the area. It should in fact be an international economic enterprise working for the benefit of all mankind. There was no doubt that a consensus was emerging with regard to the structure of the machinery. His delegation agreed that there should be an assembly, in which all States were represented on the basis of sovereign equality, a council composed of a smaller number of States on the basis of equitable geographical distribution, a secretariat, and an operating arm which would conduct all technological, commercial and industrial activities relating to the exploration of the area and the exploitation of its resources. In addition, suitable machinery must be established for the settlement of disputes.

57. His delegation envisaged the assembly as the supreme legislative authority governing the international régime and the council as a subsidiary executive body to carry out the policies laid down by the assembly. The members of the council should be elected by the assembly on the basis of the principle of equitable geographical distribution, there should be no permanent members, and membership should be for a fixed period of two to three years, which need not exclude the possibility of re-election. All members of the council should have equal voting rights with regard to all matters that came before it, and no State or group of States should have weighted voting powers or a veto.

58. Mr. NOVAKOVIĆ (Yugoslavia) said that his country was particularly interested in the application of the principle of

³ Resolution 3201 (S-VI).

the common heritage of mankind. The adoption of the Declaration of Principles, based on that concept, was the most important moment in the development of the contemporary law of the sea and all its elements should be reflected in the future convention. In that respect, the principles of the peaceful uses of the area, non-appropriation, and the exploitation of the resources for the benefit of mankind as a whole should be particularly borne in mind.

59. With regard to the machinery to be established, his delegation considered that its basic functions, namely the exploration of the area, the exploitation of its resources and the sharing of benefits, could be ensured only by setting up a strong and efficient Authority. The future convention should achieve full universality to be viable; the Authority, in order to earn the confidence of all its members, should be organized on democratic principles.

60. Since the resources of the area should be used for the benefit of mankind as a whole, the policy and the regulatory powers of the Authority should be under the direct control of all countries. The assembly, as the highest and most representative body of the Authority, in which all States should have one vote, should have the broadest political and normative powers. In view of the powers of the assembly, the council should have only executive powers, as well as those rights and duties that derived from the convention or that might be given by the assembly as provided by the convention. The composition of the council should be guided by the criterion of equitable geographical representation, taking especially into account the interests of the developing countries. No member of the council should have a privileged position or be a permanent member because of its financial or economic power or technological advances. Rotation of membership should be appropriately applied in the council. If a legal position was given to some particular groups in the main bodies of the Authority, it could create rivalry instead of encouraging peaceful co-operation among States.

61. With regard to the question of who might explore and exploit the area, Yugoslavia, like most developing countries, could not accept that the Authority should limit its activity to co-ordinating licensing in the area. The resolution concerning the law of the sea adopted at the Fourth Conference of Heads of State or Government of the Non-Aligned Countries held at Algiers in 1973 reaffirmed the need to set up an International Authority having effective control, either directly or by any other means on which it might decide, over all activities related to the exploration of the area and the exploitation of its resources. That resolution stressed the primary role of the Authority in the direct exploitation of the area, allowing at the same time other forms of exploitation if adopted by the Authority.

62. The principle of the just distribution of benefits should be applied in such a way as to ensure the preferential treatment of developing countries, and particularly of the land-locked and geographically disadvantaged countries.

63. His delegation supported the opinion that the Authority must have enough power and the function to regulate the activities connected with scientific research and to facilitate, *inter alia*, the access to the results of such research for all States and for mankind as a whole.

64. With regard to the problem of the economic consequences of the exploitation of resources from the sea-bed, the solution should conform to the conclusions of the sixth special session of the General Assembly on raw materials and development, as well as to the activities of the United Nations Conference on Trade and Development in that field.

65. Mrs. MATHEY (Congo) said that General Assembly resolution 2749 (XXV) had set the stage for a new form of international co-operation in the matter of the sea-bed and the ocean floor, based on the concept of the common heritage of man-

kind. The resolution reflected the Assembly's intent to seek to close the current gap between developed and developing countries.

66. Her delegation stressed the fact that the exploitation of mineral resources in the international area must not jeopardize the interests of developing countries that produced and exported those minerals. It was also necessary to ensure that the disparity in technical and financial resources of the different countries would not result in industrialized States monopolizing exploitation of the area. Her delegation therefore appealed to the industrialized States to contribute effectively to the training of specialists of the third world and to the effective transfer of technical data, failing which, as the Venezuelan delegation had said, it would be proved once again that it was impossible to involve developing countries in building a new order based on economic and social justice.

67. Her delegation was anxious to see resolution 2749 (XXV) translated into reality and therefore supported the establishment of international machinery to regulate the area. The machinery which would have a legal personality should be provided with broad powers extending, *inter alia*, to exploration and exploitation of the area, marketing of its products, equitable sharing of the benefits, controlling as far as possible the unfavourable consequences of the exploitation of the area, particularly fluctuations in the price of raw materials, and finally protecting the marine environment and ensuring that the area was used for peaceful purposes.

68. Turning to the question of who would exploit the area, her delegation considered that such a role belonged to the international community and should be exercised through an international public enterprise under the control and in the interests of all members. In view of the large financial and technical resources required, an intermediate stage of co-operation should be envisaged between public and private capital in the form of mixed economy companies, with the public capital holding a substantial majority share so as to ensure the greatest degree of joint management—an essential characteristic of the concept of common heritage.

69. With regard to the structure and functions of the international machinery and its various organs, her delegation, just as many others, envisaged an Authority consisting of five organs: a plenary organ, the assembly, composed of all the States parties to the instrument establishing the Authority on the basis of equality of sovereignty; an executive organ with a limited composition, the council, whose members would be elected by the assembly, taking duly into account the need for equitable geographic distribution and the diversity of situations of the different countries; an enterprise, the organ which would ensure technical liaison with any participants and which could carry out activities in the area on its own account; a secretariat and a system for the settlement of differences with simple rules of procedure. Finally, her delegation formally opposed any formula which would give preponderance to certain States within the organs simply on the basis of power or wealth.

70. Mr. RAMIREZ (Ecuador) stated that the principle of the common heritage of mankind adopted under resolution 2749 (XXV) should be the mainstay of the new legal system. That principle superseded the doctrine of *res nullius* and transcended, as the President of the Assembly had pointed out, the opposition between the doctrines of *res nullius* and *res communis*, the application of which had often in the past resulted in arbitrary and irresponsible acts in benefit of some States and at the expense of others that did not have then the technical and financial means required to derive profit from the high seas and its resources.

71. Since the principle of *res nullius* was out-dated, the principle of common heritage of mankind was clearly applicable to superjacent waters and should even take the form of a

single régime that would cover any kind of problems such as suspended particles of metal in the sea water, and pollution among others.

72. Ecuador considered that the principle of the common heritage should apply to the entire area beyond the limits of national jurisdiction, namely, the international area, taking into account certain well-established freedoms, and that it should be closely co-ordinated with the single régime that its delegation proposed for the zone of national sovereignty and jurisdiction, which was 200 miles for Ecuador. Within the latter zone, however, *jus communicationis* would be preserved under international free passage. The new international sea law should also preserve the sovereignty of States and promote their economic and social development, the welfare of the peoples and international solidarity and co-operation.

73. The position of Ecuador on the régime and the international machinery was set forth in document A/AC.138/49 jointly submitted with 12 other Latin American States, in which the guidelines coincided with those of the African and Asian States.

74. The principle of the common heritage could not be respected if the 10 commandments referred to, in connexion with the Declaration of Principles, by the representative of Jamaica at the 4th meeting, were not followed. In that connexion, the delegate of Ecuador mentioned five points which he considered particularly significant: first, the international régime and machinery should have jurisdiction over the area, which meant the power to regulate and control all matters concerning the area; secondly, the International Authority administering the régime must have sufficient powers and flexibility to adapt to changes resulting from technical progress and to ensure the marketing of raw materials; thirdly, the international organ should include an enterprise which would enable it to exploit directly or jointly with States or companies, the latter being under the responsibility of the State to which they belonged.

75. Ecuador was strongly opposed to any licensing system, which it considered contrary to the spirit of the Declaration of Principles and which would tend to award the most productive sectors to consortia or to international companies. It was not a question of excluding the latter and indeed in most cases they would be the ones exploring and exploiting the area, but simply of bringing them within a system of contracts of opera-

tion or association which would clearly reflect the power of control of the International Authority and its enterprises as well as the responsibility of the authority towards member States. The rational joint administration of the heritage of mankind was incompatible with the system of licences.

76. Fourthly, with regard to the structure of the international body, Ecuador considered that the assembly should be its only central organ where all power would be concentrated. It would be composed of all the members, each having equal power. Any proposal aimed at establishing categories or classes of privileged States was unacceptable as contrary to the Declaration of Principles and the concept of sovereign equality of States enshrined in the Charter.

77. Fifthly, Ecuador shared the view of those strongly opposed to the suspension of the moratorium called for in resolution 2574D (XXIV) and was therefore ready to join in any action to neutralize the manoeuvres of States or of companies that claimed to exploit unilaterally the area prior to adoption of the international régime.

78. The delegation of Ecuador reserved the right to intervene on other important questions, such as the settlement of differences.

79. Speaking in exercise of his right of reply, Mr. SEPULVEDA (Mexico), with whom Mr. FONSECA TRUQUE (Colombia) and Mr. MARQUEZ (Venezuela) associated themselves, thanked the representative of the United States for not having interrupted him when he was stating the views of his delegation, but considered that the intervention of the United States delegation was out of place. A close reading of the terms of reference of the Committee did not support the restrictive interpretation the United States delegation had given to the question before the Committee. Nothing prevented the Committee from assisting the Second Committee in determining the limits of the international area. Furthermore, the questions concerning the exploration of the area and the exploitation of its resources were related to nearly all the other activities of the Conference, and any attempt to fix any rigid frame was inadmissible. It must be borne in mind that the Conference was a meeting of plenipotentiaries aimed at finding solutions in the interest of all and consequently it was inappropriate to attempt to compartmentalize the various issues. ▽

The meeting rose at 1.15 p.m.

8th meeting

Wednesday, 17 July 1974, at 3.10 p.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Statements on the international régime and machinery (concluded)

1. Mr. MARSIT (Tunisia) reaffirmed his delegation's support for the concept of the common heritage of mankind. That was the basic principle which should govern the Committee's decisions on the main points before it, namely, the extent of the international area, the powers of the International Authority which would be responsible for administering the common heritage and the means of sharing the benefits of the exploitation of that area among States.

2. His delegation would support any steps taken to prevent a reduction in the size of the area, without prejudice to the legitimate rights of coastal States. In the light of those considerations, his delegation had agreed to the concept of an economic zone of not more than 200 nautical miles, even though the size

of its continental shelf could enable his country to claim a broader area. It had always supported the theory that the maritime space claimed by islands should be established in accordance with objective criteria in order not to reduce the size of the international area and it was surprised that all land-locked States did not endorse that point of view.

3. It was not, however, enough to guarantee the size of the international area. The Authority responsible for it must have wide powers in order that it might effectively control its exploration and exploitation. It must therefore have a full, autonomous legal personality and be composed of the following bodies: a general assembly, which took the most important decisions and on which all States were represented on an equal footing; an executive council responsible to the assembly, and faithfully reflecting its composition; an operational body exclu-

sively responsible for the exploration and exploitation of the resources of the area and legally empowered to carry out the necessary control and conclude contracts profitable enough to cover the cost of exploration and exploitation and show reasonable profit. That body must be flexible enough to allow for the development of technology and to progress from the phase of co-operation and indirect exploitation to that of direct and even exclusive exploitation. In addition to the administrative secretariat, there must be some body responsible for the settlement of disputes.

4. The Committee must also clearly define the criteria governing the equitable sharing of the profits from the exploitation of the resources of the area, taking account of the needs of the developing countries in accordance with the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (General Assembly resolution 2749 (XXV)). At the first meeting of the Committee, his delegation had suggested that the Secretariat should prepare a working document which would enable the Committee to study the matter in detail and perhaps propose the establishment of a special body responsible for distributing those profits and modifying the criteria if necessary.

5. The transfer of technology was of particular importance to the developing countries because it was the only means by which they could escape from a situation which was becoming increasingly difficult.

6. Mr. KO Tsai-shuo (China) said that the relevant General Assembly resolutions on the international sea-bed régime must be adhered to. The resources of that area, which were the common property of the people of the whole world, must not be appropriated by any State or person. Equitable sharing by all States in the benefits derived from the exploitation of such sources must be ensured, taking particular account of the needs of the developing countries. The super-Powers must not take advantage of their advanced industrial technology to plunder those resources directly or indirectly. Since the relevant General Assembly resolutions stated that the international sea-bed area should be used for peaceful purposes, military operations, the emplacement of nuclear and other weapons and the activities of nuclear submarines in that area should be forbidden. Scientific research and related activities should be subject to appropriate regulation and should not be used as a cover for military espionage.

7. The international machinery should be endowed with real powers, including that of engaging directly in the exploration and exploitation of the resources of the area. Should the power of exploitation fall into the hands of the super-Powers or of monopolies, the heritage of mankind would remain common in name only. The assembly, in which all contracting parties would be represented, should be entrusted with all major powers, and the council, in which only a minority of States would be represented, should be an executive organ responsible to the assembly. If the powers of the council were inordinately enlarged, the super-Powers would find it easy to manipulate the Authority. His delegation supported the principles of the equality of all nations and of rational geographical representation in the composition of the international machinery and opposed any counter-proposal by the super-Powers.

8. It also supported the developing countries' contention that decisions on matters of substance should be taken by a two-thirds majority of the council members and decisions on matters of procedure by a simple majority and opposed the institution of a disguised veto system on the pretext of consensus.

9. The principle clearly stated in General Assembly resolution 2574 D (XXIV) that, pending the establishment of the international régime, States and persons should refrain from the commercial exploitation of the international area, must be respected.

10. Mr. AL-WITRI (Iraq) said that his delegation fully supported the view expressed by the Chairman in his introductory statement that permanent rules of the law of the sea must be established to prevent disputes, which were becoming increasingly frequent over questions such as fishing and the unilateral extension of territorial waters. The Committee's work should be based on the Declaration of Principles contained in General Assembly resolution 2749 (XXV) and, pending the establishment of an international authority, the moratorium called for in General Assembly resolution 2574 D (XXIV) should be respected.

11. His delegation endorsed the view that all activities in the international area, including scientific research, should be conducted solely by the Authority through a subsidiary organ called the enterprise. The cost of exploration and exploitation could be covered by a fund to which all States would contribute. His country had greatly suffered from the activities of the oil companies and did not want the Authority to fall into the hands of monopolies. It should not be merely a licensing agency, but should undertake exploration and exploitation directly or through contracts with States. In any case, all activity should be under its strict control and supervision.

12. With regard to its structure, the assembly should consist of representatives of all States, each with one vote. The executive council should consist of representatives of geographical groups, land-locked and geographically disadvantaged States being also represented. The exploitation of the resources by the Authority should not affect the prices of raw materials, upon which so many developing countries depended.

13. Mr. ANGONI (Albania) said that the establishment of legal provisions governing the international sea beyond the limits of national jurisdiction was important to international security and the economic interests of all sovereign States, and in particular to the economic development of the developing countries. The international sea had become the scene of rivalry and collaboration between the two super-Powers in their efforts to establish world hegemony. The Conference must therefore establish a legal régime for that area which would put a stop to the pillage of the resources of the sea and the sea-bed by the imperialist Powers and would administer the international area of the sea in accordance with the Declaration of Principles set out in General Assembly resolution 2749 (XXV).

14. All countries in the world, large and small, land-locked or otherwise, had the right to benefit from the renewable and non-renewable resources of the sea beyond the limits of national jurisdiction. His delegation supported the idea of an international machinery, which should be administered by sovereign States on the basis of total equality and should explore and exploit the resources of the sea and the sea-bed, taking account above all of the interests of developing countries. It naturally opposed any proposal, such as those made by the two super-Powers, concerning the establishment of a licensing system, which would merely perpetuate pillage by those Powers.

15. The peaceful use of the international sea beyond the limits of national jurisdiction was closely connected with the fight of all peoples of the world against the policy of control of the sea practised by the two super-Powers. The Conference should therefore draft legal principles which forbade the concentration of large fleets in the international area or near the coasts of coastal States and military manoeuvres near those coasts.

16. Mr. DORJI (Bhutan) said that his country, which had not been a member of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, fully endorsed the Declaration of Principles contained in General Assembly resolution 2749 (XXV), which must serve as a guideline for the international régime and machinery to be established by the Conference and should be the basis of any legal order governing the sea and the ocean floor. The area beyond the limits of national jurisdiction and its

resources must be reserved for the benefit of all nations, taking particular account of the interests and needs of the developing countries, whether land-locked or coastal. The area must therefore be viable in terms of resources and size. However, in accordance with the Secretary-General's report in document A/AC.138/87 and Corr.1, it seemed that most of the immediately explorable and exploitable resources would fall mainly within the so-called national maritime zone. Such an extension of national jurisdiction would not only seriously jeopardize the vital interests of the international community but would also negate the very concept of the common heritage. The identification and demarcation of the extent of the international area therefore constituted a vital issue before the Committee and must influence the establishment of the régime and the machinery.

17. His delegation favoured the establishment of a strong, comprehensive international régime and machinery, with equitable representation of all States. Each State should have one vote in the assembly, and the council should be established on the basis of equitable distribution and representation, including land-locked and geographically disadvantaged States.

18. A strong, representative Authority would be able to maintain balanced exploitation of the resources of the area so that the interests of developing mineral-producing countries were not jeopardized. On the other hand, those interests could be affected if national jurisdiction was extended up to 200 miles.

19. As a land-locked country, Bhutan believed that consideration should be given to the needs and interests of those countries, particularly their right to free access to and from the sea, upon which their participation in the exploration and exploitation of the resources of the common heritage depended. His delegation therefore endorsed the draft articles in document A/AC.138/93 (A/9021 and Corr.1 and 3, vol. II, p. 16) submitted by the land-locked countries.

20. Miss NGUYEN THI NGOC LAN (Republic of Viet-Nam) said that her delegation also endorsed the principle of the common heritage of mankind set forth in General Assembly resolution 2749 (XXV) and reflected in the Lima Declaration of the Second Ministerial Meeting of the Group of 77 in 1971. A sound international régime would ensure that the exploration of the area beyond the limits of national jurisdiction and the exploitation of its resources were carried out for the benefit of mankind as a whole, with particular consideration of the interests and needs of other developing countries. All States parties to the future convention should be members of the Authority, which must have full control over the exploitation of the resources of the sea-bed in the area and the competence to adopt the necessary regulations for the conservation of its living resources.

21. In close co-operation with the United Nations Conference on Trade and Development (UNCTAD), the General Agreement on Tariffs and Trade (GATT) and other United Nations bodies, the Authority should prepare international commodity agreements designed to minimize fluctuation in the prices of the minerals obtained from both land and sea-bed sources and to ensure that their export by the developing countries was not unduly affected. It must provide, in co-operation with the United Nations Conference on Trade and Development and the Inter-Governmental Maritime Consultative Organization (IMCO), for the transfer of technology to developing countries and the training of their personnel. It should ensure an equitable revenue-sharing system for the benefits derived from the area and should regulate pollution and scientific research within it.

22. The principle of equitable geographical distribution must apply in the composition of the organs of the Authority and all States must be equal in the decision-making process. Her delegation also endorsed the establishment of a permanent tribunal for the settlement of disputes. It agreed that the international

machinery should be established in a developing country which was a member of the Group of 77 and therefore supported the Government of Jamaica's offer that the headquarters should be established in that country.

23. Mr. ROMANOV (Union of Soviet Socialist Republics) said that his country had frequently set forth its position on the law of the sea and in 1971 had submitted draft articles of a treaty.¹ He noted that in accordance with resolution 2749 (XXV) the régime for the sea-bed was to be established by an international treaty of a universal character, generally agreed upon. That requirement was still valid; the régime for the sea-bed and the sea-bed organization must be worked out as part of a single convention embracing the other questions of the law of the sea. Only by observing the General Assembly's requirement of universality and general agreement could the Conference establish a durable régime for the sea-bed permitting the rational utilization of its resources in the interests of all mankind. The recommendations of the First Committee must of course be linked to the recommendations made by the other Committees, particularly those concerning the outer limits of the continental shelf.

24. His delegation agreed that the convention should include a provision to the effect that the sea-bed and its subsoil beyond the continental shelf, and the resources thereof, were the common heritage of mankind in accordance with the convention. The natural consequence of such a provision must be that all countries, without discrimination, had the right to exploit those resources. The Conference must establish a régime for the sea-bed which would guarantee the rights of all States, whether developing, developed, coastal or geographically disadvantaged.

25. The régime for the sea-bed must not affect the legal status of the superjacent waters, being waters of the high seas, or that of the air space above those waters. The convention must reflect that principle and should contain a provision to the effect that the exploration and exploitation of the resources of the sea-bed must not infringe the freedoms of navigation, fishing, scientific research, the laying of cables and pipelines, and so forth.

26. The régime must prohibit the use of the sea-bed for military purposes. Otherwise it would contradict the very idea of the common heritage of mankind. The sea-bed must be used exclusively for peaceful purposes.

27. A fundamental question, underlying the solution of other questions, was that of deciding who was entitled to explore and exploit the resources of the sea-bed. A number of delegations had argued that only an international organization should be so entitled. They had appealed to the Conference to reject the "doctrine of licences" apparently making such rejection a condition for the reaching of agreement. But what was proposed as a substitute for the licensing system? Clearly, the advocates of an international organization thought that it should involve private companies and large monopolies in the exploitation of the resources of the sea-bed on a contractual basis. But it would be unrealistic to suppose that capitalist monopolies would work for an international organization for purely altruistic motives, forgetting their own interests and the need for a substantial return on their invested capital. Experience showed only too well that capitalist monopolies did not act in that way. The report of the Secretary-General (A/CONF.62/25) stated in section II.4 that nodule projects would be undertaken, under free market conditions, as long as the prospective return on investment would be greater than the expected rate of return on alternative investments in traditional land mining. In other words, private monopolies would work for the sea-bed organization only if their profits were guaranteed. The interests of the international community would be the least of their

¹ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21, annex I, sect. 3.*

concerns. Thus, the exploitation system proposed by some delegations would not only deprive a State of its lawful rights to resources but would also enable a small number of capitalist monopolies to obtain large profits from their exploitation. Clearly, such a system would be incompatible with the idea of the common heritage of mankind and the requirement that the Conference should establish a régime which would take account of the interest and lawful rights of all States.

28. States themselves must have the right to exploit the resources of the sea-bed in accordance with the convention and with licences obtained from the sea-bed organization. In such a system, part of the income from the exploitation of the resources would be distributed among the States which were parties to the convention, with special account being taken of the needs of the developing countries. One of the requirements of the system, provisionally called a "licensing system", must be that only States, or groups of States, parties to the convention would be entitled to obtain licences, even when the exploitation was to be carried out by natural or juridical persons. But the State would bear full responsibility for the observance by such persons of the provisions of the convention and the rules concerning the exploitation of the resources of the sea-bed. The number of licences issued to any State must be limited, in order to prevent the seizure of parts of the sea-bed by one or a number of States or the establishment of monopolies. The procedure for the issue of licences must also include provisions to prevent any one State from obtaining licences for the exploration and exploitation of the potentially richer parts of the sea-bed while other States were allocated areas with poor prospects or small deposits of minerals. To protect the interests of countries which were unable to undertake the exploitation of resources immediately after the entry into force of the convention, sections of the sea-bed must be reserved for them in all the potentially richer areas. All the provisions he had referred to must be reflected in documents worked out by the First Committee. They must of course include a provision concerning the equitable distribution of benefits among all States, with special account being taken of the interests and needs of the developing countries. The Committee must draw up not only the appropriate articles of the convention but also the rules governing the exploration and exploitation of the resources of the sea-bed.

29. His delegation attached particular importance to the problems of countries having no outlet to the sea and countries with no direct access to the sea-bed beyond the continental shelf. It supported the proposal that such countries should be granted the right of free access to the international area of the sea-bed and the right to participate in the exploitation of its resources. Their interests must be satisfied within the framework of an appropriate system for the distribution of the benefits obtained from the exploitation of the resources.

30. The proposed sea-bed organization must be a forum for co-operation among States in the exploration and exploitation only of the resources of the sea-bed beyond the continental shelf. The organization must not be a cumbersome machinery which would burden its members. Its competence must not extend to any questions of the law of the sea unconnected with the exploitation of the resources of the sea-bed. Attempts to invest the international organization with functions relating to ocean space and its living resources would destroy the very basis for a generally acceptable régime for the sea-bed.

31. In conclusion, he reaffirmed that his delegation was ready to co-operate in the working out of those provisions of the convention which would concern the régime for the sea-bed. It thought that the time for discussion was past and that the Committee must now begin its substantive work on the articles of the convention.

32. Mr. KALPADAKIS (Greece) said that his country, as a Member of the United Nations, was unreservedly in favour of establishing a strong and effective régime and machinery,

within the United Nations system, in accordance with the principles laid down in General Assembly resolution 2749 (XXV). During the preparatory discussions in the sea-bed Committee his delegation had on a number of occasions supported the idea of a Sea-Bed Authority with comprehensive powers and broad functions respecting exploration and exploitation of the area beyond the limits of national jurisdiction, for the benefit of all countries equally, with particular regard to the interests of the developing countries whether coastal or land-locked. Such a task would be best performed, not by a complicated international organization burdened by a cumbersome bureaucratic system and excessive expenditure, but by a simple, efficient and strong machinery, flexible enough to adapt itself to changing circumstances in dealing with the complex problems facing it. The Committee had the difficult task of defining in precise detail the terms of reference, powers and structure of the new body in order to ensure proper utilization of the sea-bed's resources without infringing the traditional principles of freedom of navigation and fishing in the high seas or causing pollution or damage to animal or plant life. A great deal of progress had been made in the sea-bed Committee and he hoped that the Committee would continue to be inspired by the same spirit of co-operation.

33. With regard to the structure of the Sea-Bed Authority—a matter of the utmost importance for the effective functioning of the régime—there appeared to be broad agreement that it should be composed of five organs: assembly, council, operative arm, a secretariat and an organ for the settlement of disputes. His Government favoured a democratic assembly, with equal voting rights for all countries, in which all States parties to the convention would be represented. The assembly should have general policy-making power and be able to discuss and decide any questions within the scope of the régime or relating to the powers and functions of the Authority and to give directions to the council or other organs of the Authority on any of those questions. Its powers should include the following: election of council members; approval of the Authority's budget; consideration of reports from the council and other organs of the Authority; promotion of scientific research in the area; and adoption of criteria and rules for the equitable sharing of benefits derived from the area and its resources.

34. The council should be the executive organ of the Authority and should consist of a limited number of members, but with due regard to equitable geographical distribution.

35. In connexion with decision-making he considered that there should be no privileged position, in the form of either a veto or an over-weighted vote, particularly since the concept of the common heritage of mankind and the principle of equality among States called for decisions by a majority vote.

36. The tribunal, as the main judicial organ of the Authority, should be vested with compulsory jurisdiction over disputes related to the exploration of the area and the exploitation of its resources.

37. With regard to the system of exploitation—which was the core of the problems before the Committee—his Government believed that in principle the powers and functions assigned to the international machinery should enable it to manage and control all aspects of sea-bed operations, including exploitation of the area. However, it had been generally recognized by members of the Committee that the Authority would not have the necessary financial and technological resources—at least in the initial period—to undertake exploitation of the area itself. It might therefore wish to enter into contractual arrangements with private entities and enterprises in the industrially developed countries, which possessed the necessary equipment for exploitation of the area during that initial period, until such time as the Authority had acquired the requisite financial and technological capability, knowledge and expertise from its own resources and trained personnel from developing countries,

among others, to undertake and carry out the exploration and exploitation of the area itself.

38. There were three further points which his delegation considered highly important for the establishment of a satisfactory régime: first, the régime should ensure that sea-bed exploitation and mineral extraction from the area would not be detrimental to the economies of certain mineral-producing developing countries; secondly, land-locked countries should have the right of access to and from the area and of equal participation in the benefits derived from its resources; and thirdly, precise norms and criteria should be established for the equal sharing of benefits derived from exploitation of the area's resources, with particular regard to the interest and needs of developing countries, thus reducing existing economic inequities among States and promoting the ideal of international social justice.

39. His Government welcomed the offer from the Government of Jamaica to be host to the Sea-Bed Authority, particularly as Jamaica was one of the developing States which were the initiators and spiritual fathers of the concept of the common heritage of mankind and the new order to prevail in the sea-bed area beyond the limits of national jurisdiction.

40. In the context of the common heritage of mankind, he mentioned the question of archaeological and historical treasures found in the area, which his Government considered should be preserved by the Authority, taking into particular consideration the preferential rights of the State of cultural origin. ✓

41. Mr. GANIBAL (Mongolia) said that the principle of the common heritage of mankind meant that all States should be able to explore, exploit and profit from the resources of the international area on an equal footing. In that area, there should be complete freedom of navigation, overflight, scientific research, fishing and laying of submarine cables and pipelines. In order that the exploration and exploitation of those resources should be carried out for the benefit of all mankind, taking particular account of the interests and needs of the developing countries, his delegation supported the establishment of an International Authority to control those operations. That Authority should have an assembly in which all States were represented, an executive council with a restricted membership based on equitable geographical distribution, a committee to exploit the mineral resources and a tribunal responsible for the settlement of disputes. The principle of equitable geographical distribution should also be followed when recruiting the staff of the secretariat and the subsidiary bodies. The Authority could be the centre for co-ordinating exploration activities and for collecting and disseminating scientific data.

42. His delegation also hoped that the interests, needs and rights of the land-locked countries would be duly taken into account in the future convention.

43. Mr. PASTOR RIDRUEJO (Spain) said that he would like to restate briefly his delegation's position, which had already been stated in the sea-bed Committee and its subsidiary bodies.

44. His delegation maintained a flexible position and would do everything in its power to achieve a negotiated solution which would satisfy the interests of all States. There were strong divergences of opinion among States, which centered on two points: the nature, powers and functions of the sea-bed organization, and the structure of the organization. The reason for those divergences was that no real consensus existed on the basic idea of the sea-bed régime and machinery, namely, the concept of the common heritage of mankind as embodied in General Assembly resolution 2749 (XXV). Some delegations saw the International Authority as a simple co-ordinating organization, mainly of a technical nature, which would issue licences for exploration and exploitation of the area's re-

sources. The resources would be marketed without regard to the effect on world primary commodity markets. The organization would tend to be oligarchic and the highly developed countries would have a privileged position. Other delegations saw the Authority as an international organization with strong powers and broad functions which would include not only exploration and exploitation but also marketing, with a view to preventing a decline in the prices of land-produced minerals, especially those produced by developing countries. The organization would have a democratic structure, being controlled by an assembly in which all countries would have voting rights.

45. His delegation supported the second concept as the one which would best give effect to the idea of the common heritage of mankind. That was the idea underlying all his delegation's statements, both in the sea-bed Committee and at the Conference. The viability of the organization would, however, depend on a political decision by the richer countries to provide it with the necessary capital and technological means to undertake exploration and exploitation of the international area of the sea-bed.

46. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that recent years had brought ever wider recognition of the need to utilize the natural resources of the sea-bed in the deepest parts of the oceans for the benefit of all countries. Certain factors would play a vital role in meeting that need, among them mankind's growing demand for mineral raw materials on the one hand, and, on the other, contemporary knowledge concerning the presence of such materials in formerly inaccessible areas and the development of the means of exploiting them. The Committee must constantly bear such factors in mind when working out specific provisions and articles concerning the régime for the international area of the sea-bed.

47. His delegation endorsed the view of those delegations which had declared themselves in favour of the freedom of scientific research on the sea-bed; without the knowledge already obtained from such research, it would be impossible for the Committee to consider the items allocated to it or to examine the question of the establishment of a sea-bed organization. Future scientific research was also of great importance, especially for the rational utilization of the common heritage of mankind. No one would argue that contemporary knowledge concerning the deepest areas of the ocean was comprehensive or sufficient, whether it was knowledge about deposits of natural resources or knowledge about the consequences of the exploitation of such resources and its effects on the marine environment.

48. Clearly, the study of the sea-bed and its resources must be continued and appropriate conditions must be established for its expansion and the elimination of obstacles, including quite unjustified attempts to limit the freedom of scientific research. Such an approach would help to reconcile the various positions reflected in the alternative draft articles prepared in the sea-bed Committee.

49. In a broader sense the study of the sea-bed had a bearing on a number of branches of science which could not be developed without knowledge of the sea-bed, its structure and geomorphology and the geological processes taking place on it. The verification of the theory of continental drift, for example, would be impossible without investigation of the sea-bed. In many cases the sea-bed was the only area where it was possible to solve problems of world significance such as the study of the earth's crust.

50. His delegation agreed with those which had stressed the importance of the drafting of regulations governing the exploration and exploitation of the resources of the sea-bed. A number of delegations, notably that of Jamaica, had quite rightly maintained the inadmissibility of uncontrolled exploitation of the resources and had argued for control at all stages. But it was first necessary to know exactly what was to be controlled and what requirements were to be imposed on those

subject to control. Such requirements must be clearly formulated in specific regulations applicable to the various stages of the industrial exploration, exploitation and utilization of the resources. Other provisions might be included in the regulations, such as that suggested by the representative of Canada at the 2nd meeting concerning the safety of workers.

51. He regretted having to refer to a new and dangerous element which had entered the Committee's debate. No verbal camouflage could mask the attempt to call into question or even revise one of the most important provisions of the Declaration of Principles, namely, that nothing in the Declaration should affect the legal status of waters superjacent to the area of the sea-bed or that of the air space above those waters. The Conference should give careful thought to the possible harmful consequences of rejecting that principle. To reject provisions of the Declaration which had been approved by the General Assembly with great difficulty only a few years previously would hardly further its efforts.

52. Mr. ALLOUANE (Algeria) said that his delegation had taken part in the sea-bed Committee's work since 1971. It believed that the principle that the sea-bed and its resources were the common heritage of mankind and should be exploited in the interests of mankind, with due regard to the needs and interests of developing countries, should be clearly reflected in the proposed régime and machinery. There seemed to be general agreement on the establishment of international machinery but there were serious divergences of view regarding the powers of the machinery. In his delegation's view the machinery should have all the powers required for management, exploration, exploitation and control of the international area. It should therefore have a general assembly, with full powers for decision in all matters relating to exploration, exploitation, marketing and distribution of benefits, an executive body with limited membership based on equitable geographical distribution with no country or group of countries having any preponderance of power, and an operational organ to be responsible for direct exploration and exploitation of the international area and the marketing of products.

53. He refuted the argument that the international machinery would lack the technical means to exploit the sea-bed resources: the developed countries possessed the means and should demonstrate their co-operation by making them available to the international machinery until it possessed the financial means to acquire its own facilities. There should be absolutely no question of ceding exploitation of the international area to multinational companies, who would betray the concept of the common heritage of mankind and, on the pretext that the international machinery lacked technical means, would hand over exploitation to private enterprises whose colonial activities the third world countries knew only too well.

54. A further organ would be necessary, to be responsible for planning on the basis of world requirements of mineral products, deciding the extent of the area, the amount to be extracted and the marketing price, with a view to preventing adverse effects on the land-based resource production of the developing countries. The documents pursuant to resolution 51 (III) of the United Nations Conference on Trade and Development—of which his country and Peru had been sponsors—showed clearly that sea-bed exploitation would affect the developing mineral-producing countries. The economies of certain developing countries were heavily dependent on mineral exports and those countries could lose up to half their export earnings as a result of sea-bed production: they must be safeguarded against such losses. To that end, in addition to preventive measures, a system should be devised for compensating at least part of such losses. A price stabilization fund should be set up to ensure fair prices and remuneration for minerals produced by developing countries, and international agreements should be concluded on products likely to face competition from sea-bed products. The developing countries

should be given a formal guarantee at the Conference, since experience showed that promises given at the United Nations Conference on Trade and Development sessions remained a dead letter. The compensation scheme and the guarantee could, for example, be financed by a portion of the machinery's revenue, a tax on consumers of the products, or contributions from the international financial organizations. The scheme should be part of the international machinery and administered by it, and it should operate automatically.

55. Regarding settlement of disputes, his delegation did not consider that the establishment of a tribunal would be the best method, but it would not oppose a majority decision, provided that its membership was based on the principle of equitable geographical distribution and included legal and economic experts.

56. It should be clearly stated in the proposed convention that the machinery's decisions would be compulsory and not merely recommendations or resolutions.

57. Mr. BROMS (Finland) said that the new International Authority should have all necessary powers, not only to regulate sea-bed mining, but also to carry out new projects and promote mining as a whole. There seemed to be a consensus as to the necessity of establishing an International Authority to administer the exploration and exploitation of the riches of the sea-bed and the relevant research. His delegation joined in the general support for the idea of establishing an organ structured in the same way as the specialized agencies of the United Nations. The Authority should be so constructed as to ensure maximum flexibility but its structure should not be costly to run and administrative expenses should be kept as low as possible. The benefits accruing from the work of the Authority should be distributed equitably among its members, special account being taken of the needs of the developing countries.

58. The Authority should have an assembly and a council as its main organs. The assembly should consist of all the members of the Authority, with equal voting rights. His delegation thought that only States should be able to be members of the assembly, but representatives of international organizations might participate in its meetings as observers. The assembly would be the policy-making body but it should not have to concern itself with routine matters. The council should be responsible for carrying out the assembly's decisions. In his delegation's view, the council should be limited to 24 to 30 members, but the exact number could be decided when it was known what its duties were to be. However, the various interest groups could be adequately represented even in a small body. Voting in the council should be in accordance with the principle of equality; the principle of the two-thirds majority should apply in decision-making.

59. Until more was known about the tasks to be entrusted to the Authority, his delegation preferred to leave open its position concerning the establishment of an enterprise agency. It felt that the problems connected with the secretariat should not be too difficult to overcome, in view of the experience accumulated in the establishment of similar organs.

60. With regard to the settlement of disputes, his delegation thought that until the approximate number and nature of disputes was known, there was no need to establish a tribunal for their settlement. For the present, the means for the peaceful settlement of disputes spelled out in the United Nations Charter should suffice. If they did not, the parties should be authorized to have recourse to the International Court of Justice.

61. His delegation favoured a system for the exploitation of resources whereby the Authority would initially issue licences to member States or to private persons and corporations. Such a system would permit the utilization of technical know-how concerning nodule mining and bring the best economic results for the Authority and its members. Once the necessary capital had been accumulated, the Authority could start exploitation

on its own or in joint ventures, if that was regarded as an economically sound solution. Such matters would have to be decided at a later stage; for the present the Committee should maintain a flexible approach, and articles covering the various alternatives should be written into the convention.

62. Mr. PALACIOS (Bolivia) said that he would like to outline his delegation's position on some of the more important matters before the Committee.

63. In the first place, the Authority or machinery to be established in the international area should be given full powers to promote, carry out and control all activities related to exploration, exploitation, marketing of resources and equitable sharing of benefits, protection of human life, maintenance of the ecological balance of the marine environment, and scientific research. Scientific research should be conducted with the assistance of personnel from the developing countries, thus helping in the transfer of technology.

64. In the initial period, however, and until it had acquired the economic means to carry out all the activities itself, the Authority could assign some of its activities to interested States, under strict control and subject to licences or operation and service contracts. Private enterprises or transnational corporations could apply for licences or enter into contracts, provided that they were sponsored by one or more States who would be responsible for them.

65. Land-locked countries should be given free access to and from the international area without restriction or discrimination. In that connexion he referred to the articles submitted jointly by Afghanistan, Bolivia, Czechoslovakia, Hungary, Mali, Nepal, Zambia in document A/AC.138/93(A/9021 and Corr.1 and 3, vol. II, p. 16).

66. His country, like many others represented at the Conference, suffered the twofold disadvantage of being a developing and a land-locked country. Those disadvantages should be given special consideration and equality ensured in the sharing of benefits, participation in the Authority's activities and membership in the various bodies, such as the council.

67. By those means, it would be possible to set up an instrument with the necessary authority and the means of compulsory settlement of disputes, which would be sufficiently dynamic and effective to meet the interests and aspirations of mankind as set forth in General Assembly resolution 2749 (XXV).

68. As a traditional producer and exporter of a large variety of minerals, many of which were important to its economy, Bolivia was concerned about the problems of sea-bed mineral mining and its potentially adverse effects on international price levels. In that connexion he welcomed the attitude of the United Nations Conference on Trade and Development as expressed in document TD/113/Supp. 4,² and in the recent statement by its representative at the 6th meeting. The preventive and compensatory methods of protection should be supported. It was essential for the Authority to exercise control.

69. Mr. STEVENSON (United States of America) said that the central issue before the Committee was the extent of control by the Authority over commercial development of the resources of the international sea-bed area. The Authority would have control and exercise it through its principal organs: the assembly, which would provide broad policy guidance, the council, which would take executive decisions, the operational arm, which would manage the day-to-day affairs of the Authority, and machinery for the settlement of disputes. The United States delegation had, at the 1973 Geneva session of the sea-bed Committee, proposed the creation of a comprehensive law of the sea tribunal for disputes arising out of the interpreta-

tion or application of the convention. However, his delegation would anticipate that the dispute settlement machinery of the Authority would be a more specialized organ. It would be necessary to provide for some checks and balances among the organs of the Authority to ensure against abuse of power.

70. It was widely recognized that the Authority would have to exercise certain controls. These controls were the rights of the Authority and those rights must be accompanied by corresponding duties. There appeared to be widespread support for the following categories of rights: the right to prevent degradation of the marine environment from sea-bed exploration and exploitation; the right to obtain sufficient and reliable information to ensure that it was receiving all benefits and income to which the treaty entitled it; the right to impose requirements preventing any state or person who did not intend to explore and exploit from obtaining or keeping any mining rights in the area; the right to require that mining should be carried out safely; the right to ensure that provisions in the treaty aimed at promoting programmes for the transfer of technology to the developing countries and providing for the training of developing country personnel were implemented; the right to ensure that the resources of the area were not monopolized by a few countries or private entities so as to preclude developing countries from participation in the exploitation of those resources when they had the technological and financial capacity to do so; and the right to participate in the benefits of resource development. His delegation would work to achieve those kinds of controls. Some of those controls should be carefully spelled out in the convention, while others should be included by way of a mandate to regulate in the future, provided agreement could be reached in the convention on standards for the regulatory machinery and a just procedure for rule-making.

71. Statements by other delegations concerning the duties and obligations of the Authority had revealed that there was agreement on the need to ensure the following: that no State would be subject to discrimination in the exercise of its rights and that no State could be deprived of a right of access to the resources, if it met the obligations imposed by the treaty; that stable conditions would be provided for investment which would promote the development of resources, since everyone depended on the creativity and initiative of a pioneering few to achieve benefits for all from the extraction of the resources; that the Authority would not encumber those who extracted the resources with needless regulatory interference and administrative burdens which would reduce economic efficiency and thus the benefits to be obtained; that the property, including the proprietary data and trade secrets of those who extracted the resources was protected; and that the Authority would provide facilities and institutions for the knowledge and technology which would be transferred to developing countries.

72. His delegation was gratified by the general recognition of the need for negotiation on the fundamental terms, conditions and safeguards for exploration and exploitation. He felt that the differences between the two conceptual approaches to the question of who would exploit the area were not as serious as previous debate had indicated and that a close study of basic conditions of exploitation would help the Committee to reach agreement.

73. It appeared that in one major area there was no sign of rapprochement—the belief of a few major producers and exporters of nickel and copper, the two metals of principal commercial interest in manganese nodules, that a problem would accrue to them from sea-bed production. He said that his delegation was pleased that the Committee would have the opportunity to study more fully the report of the Secretary-General (A/CONF.62/25). It would be most useful for all countries, developed and developing, which were consumers of those materials in raw or manufactured form to analyze their interests together. Several proposals had been made calling for

²See *Proceedings of the United Nations Conference on Trade and Development, Third Session*, vol. II (United Nations publication, Sales No. E.73, II. D.5).

production and price controls or for limiting access to the resources of the area. Other proposals had been made which might have been motivated by a desire to ensure that the Authority could effectively regulate production. Such proposals could be seriously disruptive because they would be used to maintain or increase prices or to deprive States of access to the resources. Moreover, if they were used, they might well decrease the benefits to consumers everywhere from the availability of a new supply of nickel and copper and products made from those metals. Economic studies carried out by the United Nations had shown that the increase in copper demand would greatly exceed the rate of development of sea-bed production of copper. Demand for nickel would, to a lesser extent, also exceed the rate of sea-bed production, but nickel was in any case largely a developed-country export. The effect on manganese was speculative, but he knew of only one company that had plans to produce any manganese from nodules. The cobalt production of one or two developing countries might be affected, and appropriate measures would have to be considered in that connection. He advocated extreme care in approaching the problem of economic implications, so that the remedies applied would not be more dangerous than the problem itself.

74. Sea-bed metal production should be treated on the same basis as land production so that the two sources together would account for the global demand for those metals. Special restrictions for one source and not the other would be equivalent to discrimination against all States that were sea-bed producers.

75. His delegation placed special emphasis on the decision-making procedures which the Authority would use in dealing with the problems arising in connexion with control over the resources of the area. No single organ of the Authority should have dominance over the decision-making machinery. He proposed the use of a special procedure, similar to the one used by the International Civil Aviation Organization, which he called rule-making, to be applied in respect of unpredictable developments in the fields of environmental protection, mining safety, resource conservation and so forth. Rules would be drafted by a specialized subsidiary organ, approved by the council and forwarded to all States for review; if after a specified time period, perhaps 90 days, less than one-third of the members of the Authority had raised objections, the rules would become binding. That approach would provide maximum opportunity for expert review in the Authority and in Governments and would avoid the risk of undue influence by one or another organ of the Authority.

76. In order to ensure that all members of the Authority would be satisfied with it, the convention should contain as many procedural protections as possible. First, the convention should ensure nondiscriminatory access to the resources of the area for all States; if the Authority was empowered to restrict the number of areas available for commercial development and to select among applicants, his Government would not be satisfied that its access was secure and free from potential discrimination. Secondly, the mandate of the Authority should be to control only activities in the area which were directly related to the exploration and exploitation of sea-bed resources. Thirdly, the convention should provide an appropriate system of checks and balances among the organs of the Authority. Fourthly, a carefully defined system of rule-making should be elaborated in the convention to ensure a fair and thoughtful decision-making process. Fifthly, provisions for the compulsory settlement of disputes and the establishment of machinery for that purpose were essential. Sixthly, voting arrangements in the council of the Authority should be realistic. Seventhly, the concerns of land-based producers which were developing countries should be accommodated, if it was clear that sea-bed production would adversely affect their level of domestic production, but at the same time consumers of goods made from raw materials found in the sea-bed should be protected from artificial price increases for such materials. Eighthly, the provi-

sional application of the permanent régime and machinery should be ensured.

77. He agreed with a previous speaker who had rejected proposals for a system of exploitation which would permit the Authority to issue licences and also to engage in direct exploitation of the area simultaneously. The Conference would seek a single system for exploration and exploitation which would accommodate the interests and needs of all countries.

78. Mr. GHELLALI (Libyan Arab Republic) expressed the hope that the Conference would be able to establish an international régime of the sea-bed and ocean floor beyond national jurisdiction based on the principles contained in General Assembly resolution 2749 (XXV). Special consideration should be given to the needs of the developing countries and also to the interests of all peoples whose territories were still occupied by foreign States; that could imply that all economic advantages should be reserved exclusively for those peoples who would, sooner or later, regain their occupied territories.

79. His delegation supported the establishment of an International Sea-Bed Authority, clearly insulated from great-Power politics, and with adequate powers to ensure the application of the régime. The Authority would exercise jurisdiction, not sovereignty, over the area and its resources, and would be responsible for distributing the profits derived from exploitation of the resources, preserving the marine environment, promoting the development of the area, planning, and the transfer of science and technology. The main function of the Authority should be to control all economic and related activities in the area and to carry out direct exploration and exploitation of the sea-bed and its resources. The licensing system that had been proposed was unacceptable to his delegation; it would be a departure from the principles of General Assembly resolution 2749 (XXV) as it would mean that the international sea-bed area could easily fall under the control and monopoly of a few powerful States. A licensing system would not be in keeping with the interests of the developing countries, which were well aware that joint management was the most important and revolutionary aspect of the concept that the international area was the common heritage of mankind.

80. The Authority should consist of a plenary organ, in which all States parties to the convention would be represented and in which each member would have one vote, an executive organ with restricted membership whose composition should reflect the different views of regional groups, an operational organ and a secretariat. A machinery for settling disputes, which he hoped would be more efficient than those previously provided for in United Nations instruments, should be established. He expressed his conviction that any special arrangements made by certain States with a view to dominating any organs of the Authority in the name of technological and administrative efficiency would be doomed to failure.

81. Mr. VANDERPUE (Ghana) said that, although negotiations had been going on for over six years now, no agreement had been reached and there were still too many brackets and alternative formulations in the draft articles that had been drawn up. There was, however, general agreement that the international sea-bed area should be exploited for the benefit of mankind as a whole. Delegations should study other delegations' positions carefully to determine whether the differences of opinion on the means and methods of exploiting the resources of the sea-bed were fundamental or superficial.

82. His delegation had already stated its views in the sea-bed Committee on the structure and constitution of the international machinery. One of the first matters that should be settled was the delimitation of the international area, for the size of the area to be exploited and the potential profitability of exploitation would determine to a certain extent the type and size of the international machinery needed to govern its exploitation. Some delegations had understood that agreement had been

reached that there would be a 200-mile economic zone for coastal States and that the remaining ocean space would constitute the international area; there had, however, apparently been a misunderstanding on that question, even among those who supported a 200-mile economic zone, which should be resolved. Great care should be exercised in establishing the international machinery to ensure that it would not work to the detriment of the developing countries for whose benefit it was being established.

83. With regard to the question of the economic implications of sea-bed mineral production, he noted that two documents, TD/113/Supp.4 of 7 March 1972 and TD/B/449 of 25 June 1973, stated clearly that uncontrolled exploitation of sea-bed minerals would disrupt the market and adversely affect the economies of the developing countries that produced those minerals. The first of those documents (paragraph 21) stressed that no overt or disguised stimulus should be given to sea-bed production, and the second (paragraph 8 (h)) stressed that the international community should take care that the organization arrangements were fully consistent with the established role of the United Nations in the formulation and implementation of appropriate international commodity policies as an integral component of an over-all strategy for development, particularly of developing countries. However, as the representative of Fiji had said, controls to safeguard the interests of producing countries should not prejudice the interests of consuming countries. His delegation supported the enterprise system under which the International Sea-Bed Authority would engage directly in exploitation of the area, for that was the only way to ensure proper regulation of production and

marketing. That approach had been supported by the Organization of African Unity and by various States.

84. Mr. WARIOBA (United Republic of Tanzania), clarifying his delegation's position, said that it had made two fundamental changes in its position since submitting document A/AC.138/33 to the sea-bed Committee in March 1971. His delegation had previously favoured delimitation by depth as well as by distance, but it now called for delimitation exclusively by distance. On the question of who should exploit the international sea-bed area, his delegation had previously supported parallel exploitation of the resources of the area by the International Sea-Bed Authority and by other entities, but it now called for the exploitation of the area exclusively by the Authority.

85. The CHAIRMAN thanked members of the Committee for their co-operation during the special debate, which had proved useful in that it had highlighted the main issues and had provided an opportunity for new members to express their views.

86. He requested the Committee to show the same spirit of co-operation in the informal meetings to be headed by Mr. Pinto, and to remove all the alternative formulations and brackets on questions about which there appeared to be general agreement and all undesirable alternative formulations and brackets on matters which were still at issue. The Committee would meet formally on 26 July to hear the preliminary report by Mr. Pinto.

The meeting rose at 6.45 p.m.

9th meeting

Tuesday, 30 July 1974, at 11.05 a.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Report of the chairman of the informal meetings

1. The CHAIRMAN said that, as had been indicated in the programme of work, he had arranged for the Chairman of the informal meetings to report to the Committee. The reports had been delayed somewhat because it had been felt that more definite ideas should be allowed to emerge.

2. Mr. PINTO (Sri Lanka) said that the Committee had held nine informal meetings since the beginning of its work. It had had before it the texts appearing in the report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (A/9021 and Corr. I and 3, vol. II, p. 39) illustrating areas of agreement and disagreement, prepared by the working group of Sub-Committee I of that Committee and relating, first, to the status, scope and basic provisions of the régime, based on the Declaration of Principles contained in General Assembly resolution 2749 (XXV), and, secondly, to the status, scope, functions and powers of the international machinery. It had been agreed at the outset that the Committee would adopt the following method of work: it would begin by reviewing the draft articles relating to the first of those two topics; upon completion of that review, the chairman would submit to the Committee a list of the principal issues for discussion; finally, the Committee would decide whether to review the second topic or to begin detailed consideration of the principal issues. It had also been agreed that the Committee would use a technique adopted by the working group of the sea-bed Committee: if no conclusion could be reached after discussion of a particular text in the full

Committee, the text would be considered by a smaller group consisting of those who had participated in the discussion and any other interested delegations, with a view to elaborating a text or texts that would faithfully reflect the opinion or opinions expressed in the Committee. The results of the smaller group's work would be placed before the Committee as a whole for consideration and approval and would then be reported to an official meeting of the Committee.

3. He was happy to report that the Committee in informal meetings had considered draft articles 2 to 21 within a period of three working days, and had referred those articles to the smaller group for further consideration and report. There had been no discussion of article 1, because it had been felt that a final decision on the limits of the area would depend on the results of the discussion of limits in the Second Committee. The smaller group had not yet completed its consideration of articles 2 to 21, but was trying to reconcile opposed points of view and narrow differences of opinion so as to eliminate as many alternative formulations as possible and to arrive at a single text. Significant concessions had been made by several delegations; the number of alternative texts was being reduced. It was expected that the process would be completed and articles 2 to 21 placed before the full Committee in an informal meeting by Thursday, 1 August.

4. He had suggested to the Committee three issues that might be regarded as crucial and which ought to be the subject of detailed study. They were: first, the system of exploration and exploitation: who might explore and exploit the area, secondly,

the conditions of exploration and exploitation, and thirdly, the economic aspects of exploitation of the area. It had been agreed that those were the principal issues, although some representatives had pointed out that there were several other issues which members might consider important, such as the allocation of powers and functions to the various organs of the Authority. It had also been agreed that the first issue would be given a certain priority, since many representatives had felt that the other issues were subsidiary and should be taken up at a later stage. Other representatives had not subscribed to that view and had maintained that it would not be possible to discuss each of the subjects in isolation. In their opinion, the first and second issues were inseparable. It had been agreed that although a certain priority would be accorded to the first issue, material and relevant reference could be made to the second and third issues, and that representatives could have considerable latitude in that respect, it being clearly understood that the second and third issues would be taken up subsequently.

5. Discussion of the first issue had proceeded on the basis of the four alternative texts of draft article 9 prepared by the working group of the sea-bed Committee. At the outset, the representative of Jamaica had proposed the text of two articles designed to raise several essential points for consideration in connexion with that and subsequent discussions. The first of those articles required that all activities of exploration and exploitation should be conducted pursuant to regulations promulgated by the Authority and that no such exploration or exploitation should be carried out except under and in conformity with such regulations and the provisions of the convention. The article then listed the categories of subjects on which the Authority would promulgate regulations. The sponsor of the article had held that such regulations would ensure that the powers and functions of the Authority would be exercised in accordance with fundamental norms enshrined in the convention and, while giving a dominant and controlling position to the Authority, would introduce the element of certainty considered essential in order to attract the necessary capital and technology for the conduct of the Authority's operations. Under the second article proposed by Jamaica, exploration and exploitation of the area and its resources could be carried out directly by the Authority, or on its behalf by States, groups of States or national and juridical persons, or under such legal arrangements as the Authority might in any particular case approve.

6. An event of major significance and one that had perhaps marked a turning-point in the Committee's consideration of that central issue was the introduction by the members of the Group of 77 of a draft article to replace alternatives B and C of draft article 9. The new article provided that all activities of exploration of the area and of the exploitation of its resources and all other related activities, including those of scientific research, should be conducted directly by the Authority, which might, if it considered it appropriate, and within the limits it might determine, allocate certain tasks to juridical or natural persons, through service contracts or in association with them or through any other such means as it might determine which would ensure its direct and effective control at all times over such activities. The introduction of that article, which enjoyed the support of a very large number of participants, was a matter of the highest importance and should assist in the process of detailed negotiation towards which the Committee had been moving slowly but steadily. That single article represented a kind of manifesto of sea-bed exploration and exploitation adhered to by a very large number of countries. It interpreted the fundamental principle that all sea-bed operations should be conducted directly by the Authority, and introduced essential flexibility by providing that the Authority might utilize natural or juridical persons in the conduct of sea-bed operations under contractual arrangements that would ensure the Authority's continuing and effective control. In the course of the discussion

that had followed, considerable interest had been shown in the proposal. A number of delegations had found the draft article somewhat too concise and had sought clarification on a variety of points, particularly the basis for the underlying assumption of the financial viability of sea-bed operations conducted in accordance with the system implicit in the proposal, the modalities of sea-bed operations under that system, and the devices that would be utilized to ensure the Authority's control at all times over such activities. The representative of Jamaica had expressed the view that his proposal was not inconsistent with that of the Group of 77.

7. The Chairman of the Group of 77 had undertaken to prepare, in consultation with the members of that Group, a response to those important questions. It was hoped that that response would enable other representatives to appreciate more fully the nature and scope of the proposal and, most important, that it would set the stage for possible solutions and compromises on essential issues. The discussion was proceeding on the basis of alternatives A and D of article 9 of the text proposed by the Group of 77, and the relevant portions of the Jamaican proposal.

8. He believed that the Committee was at a momentous stage in its discussions; an opportunity missed could set it on a tragically wrong course and bring down on it the blame, if not the contempt, of generations to come. For the first time in seven years, the Conference was on the threshold of real negotiation and a possible breakthrough. Representatives bore a very heavy responsibility towards the millions of people they represented and the countless others who would seek to benefit in the future from the system the Conference was attempting to create. He was confident that representatives were determined to approach the task with the solemnity, vision and humility it required.

9. The CHAIRMAN said that the submission of alternative texts was essential for the negotiation of treaty articles. He did not share the view that the Conference had been convened to work out a declaration of principles; its task was to negotiate a treaty. He hoped that would be borne in mind during all discussions. He appealed to members to co-operate with the officers of the Committee and with the Chairman of the informal meetings, particularly on issues where the only course was to narrow the choice of texts. He hoped that if it was necessary to convene a further session, that would simply be to complete the work on agreed articles.

10. Mr. KASEMSRI (Thailand) proposed that the report by the Chairman of the informal meeting should be reproduced *in extenso* in the summary record.

It was so agreed.

Economic implications of sea-bed mineral development

11. The CHAIRMAN reminded the Committee that some delegations had reiterated the importance of the economic consequences of sea-bed exploitation. He had already indicated that some time would be devoted to discussing the subject. The representative of the United Nations Conference on Trade and Development (UNCTAD), at the 6th meeting, had given a very helpful introduction to one of that organization's reports. At least one of the industrialized countries had been unable to accept the conclusions of the UNCTAD reports. After consultations, the officers of the Committee had felt that an opportunity should be provided for all shades of opinion to be expressed. Questions could be raised and conclusions stated to permit a more balanced judgement. He had arranged with the Special Representative of the Secretary-General to introduce a report on the subject and was setting up two informal meetings with experts from the developed and developing countries, a representative of the Secretary-General and a representative of UNCTAD. They would be held on successive evenings, after which the matter could be discussed thoroughly in the Committee.

12. He drew attention to document A/CONF.62/C.1/L.2, which was a compilation of the major summaries and conclusions of pertinent documents submitted to the Conference. He had prepared the summary because some of the basic documents were available only in limited quantities and because he had felt that it would be more convenient to be able to refer to a single document. Some of the fundamental documents were not available in all languages. The summary contained no new material; it was merely intended to assist the Committee in its work.

13. Mr. STAVROPOULOS (Special Representative of the Secretary-General) introduced the Secretary-General's report on the economic implications of sea-bed mineral development in the international area, contained in document A/CONF.62/25. The report was the latest in a series prepared in accordance with General Assembly resolution 2750 A (XXV) and had also been requested by the sea-bed Committee.

14. If, as seemed likely, nodule mining became an important new source for a number of base metals needed in increasing quantities by modern society, it might well create a problem for some traditional suppliers of those minerals in developing countries. The report was a study in depth of the economic implications of sea-bed mining.

15. The first part of the report, a review of sea-bed mining activities, contained information collected by the Secretariat from technical journals, periodicals and company press releases, in the absence of more official material.

16. The second part was an analysis of the probable impact of nodule mining, undoubtedly one of the fundamental issues in the negotiations on the international régime and machinery for sea-bed resources. The nodule industry was still in its embryonic stage, however, and information from the groups developing mining and processing technology was not always complete. It had therefore been necessary to use a number of assumptions, which might well be revised once the systems under development had become operational. The figures in the report were merely indications of the magnitudes involved.

17. Metal production from nodules was a joint-product industry, the most important metals—nickel, copper, cobalt and manganese—being produced in more or less fixed proportions as determined by the nodule grade, and not in accordance with existing world demand. It had been estimated, on the basis of a number of assumptions, that by 1985 some 15 million tons of nodules might be mined and processed by the industry, resulting in a production of 920,000 tons of manganese, 220,000 tons of nickel, 200,000 tons of copper, 30,000 tons of cobalt and 38,000 tons of other metals. Cobalt production from nodules would amount to at least one half of projected world demand in 1985 and the likely impact would be substantial drops in price, affecting developing country exporters such as Zaire, Zambia, Cuba and Morocco. The impact might be even more serious if some of the cobalt-rich nodules of the South Pacific were exploited.

18. Estimates of the impact of nodule mining on manganese markets were uncertain; metallurgical recovery of manganese from nodules was complex and costly and so far only two groups had indicated plans to recover that metal. If manganese was recovered from only 4 million tons of nodules by 1985, production would amount to 13 per cent of the import requirements of the developed market-economy countries for that year. Given the inelastic nature of demand for manganese, the likely impact of sea-bed production would be to depress prices, thus reducing the export income of a number of developing countries.

19. Nickel was expected to be the mainstay of nodule operations and future expansion of the industry was likely to be, to some extent, self-regulated by the world nickel market situation. Nickel production was concentrated primarily in the developed countries, though the developing countries' market

share was expected to increase dramatically during the coming decade with the completion of several large projects now under construction or in the planning stage.

20. The recovery of copper from nodules was expected to have a minor impact on the market by 1985. The 200,000 tons which could be produced from nodules would amount to only 1.3 per cent of a total world demand of about 15 million tons, but about 6 per cent of the required net imports of the developed market-economy countries.

21. To sum up, the analysis indicated that over the coming decade the impact of sea-bed mining would not be unduly disruptive in world mineral markets and that less than a dozen developing countries might experience a fall in income. The situation could change after 1985, however, if there were no regulation by the International Sea-Bed Authority. The extent to which the nodule industry might expand would depend on the relative cost of metal production from nodules compared with traditional land sources. Only experience would show whether the existing favourable cost estimates for the nodule industry would materialize. The unique institutional framework that the Committee was in the process of creating should be capable of ensuring the rational exploitation of sea-bed resources for many generations to come.

22. The last section of the report, on promoting the rational development of nodule resources, had been prepared in response to the request to the Secretary-General in General Assembly resolution 2750 A (XXV) to propose effective solutions for dealing with problems relating to the impact of sea-bed mining. The section examined a number of policy alternatives designed to harmonize the different interests of the world community with respect to sea-bed mining. There were seldom simple solutions for complex problems: with diverse and sometimes conflicting interests, comprehensive policy packages would have to be formulated to ensure the maximum net gain for the world community.

23. The UNCTAD representative had spoken about the need for comprehensive multicommodity stabilization schemes to protect, in an equitable and effective manner, the export earnings of developing countries producers of raw materials. In the past week the nine European Common Market countries were reported to have proposed an ambitious and far-reaching programme designed to stabilize the export earnings of their associate members in Africa, the Caribbean and the Pacific which were producers of primary commodities. The International Authority should be empowered to participate in such comprehensive commodity arrangements and also to take more specific measures aimed at protecting the interests of developing countries that were exporters of minerals. Most of the debate on that issue had been between proponents respectively of compensatory and preventive measures. In the abstract, those two approaches seemed irreconcilable, but in practice, the joint-product nature of metal production from nodules, with each of the four major metals being affected to a different degree by sea-bed mining, showed that the harmonization of all interests involved would probably require a combination of both. The preventive approach, in the form of long-term planning of nodule development, could form the backbone of a strategy to safeguard the basic interests of developing countries as exporters of minerals. In addition, the world community could resort to some form of compensation to redress the hardship that might be imposed on the few countries that would not be sufficiently protected by the preventive measures.

24. The primary concern of delegates negotiating a régime for exploiting sea-bed resources in the international area was to find a just and equitable formula that would reconcile early use of the new technology for deep sea-bed mining with minimum disruption to developing countries. The report was intended to assist in the search for such a formula, which would put the common heritage of mankind to work for the benefit of all

mankind with particular concern for those whose needs were greatest—the developing countries.

25. Mr. ILLANES (Chile) asked which developing countries would be affected by the exploitation of nodules and other sources of minerals in the international area, having regard to future changes in technology.

26. Mr. BRANCO (Secretariat) said that it would be a very considerable task to list all the developing countries affected by the exploitation of sea-bed resources. A distinction would have to be made between countries that would benefit from such exploitation and those that would be adversely affected. There was also the question which minerals would be recovered. The Secretary-General's report was concerned only with nodules, because they were the only sea-bed resource in the international area that was likely to be exploited in the near future. Nevertheless, there were other possible sources, such as metallic muds, hot brines and minerals in the rock bed of the mid-ocean ridges that might become sources of metal in the next century.

27. In considering which countries were likely to be adversely affected by the exploitation of sea-bed resources, the time factor had to be taken into account. Over the next 10 years, the producers of cobalt were likely to be affected, while manganese producers might be affected. He would stress, however, that experts were very uncertain of the likely effect of sea-bed exploitation on the manganese market. The extraction of manganese was a very complicated process; only two groups, one in the United States and one in Japan, had shown any interest. On the other hand, if manganese was treated as a waste product, its recovery would involve only marginal costs provided a suitable new technology could be found. The only developing country that was highly dependent on manganese exports was Gabon; for the other major producers manganese exports accounted for less than 2 per cent of their export earnings.

28. Mr. KALONDJI TSHIKALA (Zaire) said that his country, which produced the minerals in question, would be greatly affected by sea-bed mining and could not therefore be indifferent to the report of the Secretary-General. Accordingly, it believed that the prices of raw materials, from which the industrialized countries benefited greatly, should be re-evaluated from the point of view of international justice. Zaire, which had always supported the concept of the "common heritage of mankind", attached great importance to the proposed International Authority and it believed that exploration and exploitation should not be carried on to the detriment of developing countries and humanity.

29. His delegation was particularly interested in ways of mitigating any unfortunate results that the production of minerals from nodules might have on land-based production. The prospects that compensation might afford some protection were not very encouraging, and no specific method had been suggested. For example, his delegation wondered what the obligations of the industrialized countries with respect to stabilization of prices would be. It therefore preferred the preventive approach with short-term, medium-term and long-term planning geared to the manner in which production from nodules would affect the economy of developing countries.

30. His delegation wished to have the views of the economic affairs officer on the powers of the International Authority for the prevention of possible unfortunate results from sea-bed mining.

31. Mr. BRANCO (Secretariat) said that it was possible for the international community to ensure that the developing exporting countries would not be too seriously affected by sea-bed mining. The fact remained, however, that production from nodules would in no way, in the near future, be commensurate with existing demands. In the case of cobalt the smallest nodule mining operation under consideration (1 million tons of nodules per year), could supply 9 per cent of world demand. The

international community could limit nodule production to low levels in order to prevent pressures on prices but the future International Sea-Bed Authority would have to decide which mineral or minerals should be protected by restricting nodule development. If it were not possible to prevent harmful effects to developing producing countries, then the only alternative would be compensatory measures.

32. Mr. FIGUEREDO (Venezuela) observed that the report of the Secretary-General stated that only 3 per cent of the ocean floor had been studied. It would therefore seem that there was as yet insufficient knowledge of the resources of the ocean floor. Their exploitation could have great repercussions on the economies of producing countries.

33. At present, it was known that manganese, nickel, cobalt and copper could be produced from nodules. In the light of rapidly advancing technology, his delegation wondered whether other minerals might also be produced from nodules in the future and, if so, how soon.

34. Mr. BRANCO (Secretariat) said that it was difficult to reply to the representative of Venezuela as regards the timing of the appearance on world markets of other minerals produced from nodules. Fifteen years ago, mineral production from nodules had been unheard of and, similarly, mining in the mid-ocean ridges might very well be conceivable 15 years hence.

35. The representative of Venezuela had raised one important aspect which should be kept in mind by the international community, namely, the rapid advance of technology. The coming decade could very well bring new technology with respect to metallized muds and oozes and the next century might very well see mining in the bed-rock of mid-ocean ridges.

36. Mr. GONZALEZ LAPEYRE (Uruguay) asked what nations had the existing capability of exploring and exploiting the resources in the international area.

37. Mr. BRANCO (Secretariat) said that it was known that close to 10 nations had the capability to explore the sea-bed for deep-sea mining. Currently, no nation was able to engage in commercially profitable exploitation. However, enterprises and groups from the United States of America, Japan, the Federal Republic of Germany, France, Canada, the United Kingdom and the Soviet Union were all engaged in developing technology for deep sea-bed mining.

38. Mr. RATTRAY (Jamaica) said that basic rules for exploration and exploitation of the international area had to be established. His delegation wondered whether any analysis or evaluation had been made of the implications, for the international area, of raw material production from the new national 200-mile economic zone to be established. Conversely, how would exploitation of the international area affect exploitation in national zones?

39. Mr. BRANCO (Secretariat), observing that the report of the Secretary-General had dealt primarily with the economic implications in the developing countries, said that the representative of Jamaica had raised the very important issue of the interrelationship of mining in the economic zone and in the international area. The impact of one on the other was important because, for example, sedimentary areas in the sea-bed were primarily in the continental margin and, if no part of that margin was placed within the international area, all off-shore oil production in the future would be carried out exclusively within national jurisdiction. With respect to nodule mining, it was known that areas close to many South Pacific islands had nodules within the areas to be considered as coming under a 200-mile economic zone. Thus, nodule production in national economic zones would have implications for the world community and, accordingly, the Conference might wish to consider measures such as revenue sharing.

40. Mr. TARCICI (Yemen) asked where the metallized muds were to be found and whether serious studies had been carried

out with respect to their present values, i.e. whether they were economically exploitable.

41. Mr. BRANCO (Secretariat) said that those areas could be ascertained only approximately. The existence of hot brines and metallized muds in the Red Sea had come to the attention of the international community some decades before and the past decade had seen much research in methods for their recovery and processing. Copper, nickel, lead and zinc were to be found in considerable quantities in hot brines and metallized muds and it was felt that the technology for mining them was close to that of the hydro-lift type of nodule mining. In other words, it was possible to use a string of tubes and pumps to suck them from the sea-bed. Of course, those areas were limited and the hot brines and metallized muds were to be found only at specific points there. Furthermore, the suction of highly fluid sediments made it difficult to restrict the mining to the specific areas of highly metallized muds and brines. Those sediments were also to be found in Indonesia and in a number of places along the mid-ocean ridge. The Federal Republic of Germany and the United States of America seemed to be the most advanced countries in the technology for that type of mining.

42. Mr. CHAO (Singapore) observed that at the 6th meeting the representative of UNCTAD had stated that the revenue from sea-bed mining would not be enough to provide compensation to the producing developing countries. That left the alternative of the use of preventive measures through stabilization of prices. It appeared to his delegation that costs would therefore rise and, in that connexion, it should be pointed out that most developing countries were not producers but consumers of finished products. His delegation wished to know how non-producing developing countries could benefit without paying more for the finished product and how, at the same time, the interests of developing producing countries could be protected. Furthermore, the economic affairs officer had stated that the impact of nodule production could become more serious after 1985. His delegation wished to know whether that impact would be increasingly serious or whether its seriousness would gradually diminish.

43. Mr. BRANCO (Secretariat) said that the first of the Singapore representative's questions was really the crux of the matter before the Committee. The Secretariat's studies had shown that a solution which might benefit most of the developing countries could be found, but sometimes solutions were more costly than the benefits they produced, and sometimes there was no willingness to use the instruments that would help to meet the desires of the groups concerned. To protect the developing raw material producing countries without preventing sea-bed mining from increasing world supplies and slowing down the constant increase of primary commodity prices would require a package policy, involving a number of instruments, some of them powerful and having side effects which would have to be counteracted by further policy instruments. The general lines of long-term planning in the Secretary-General's report, with nickel as the guideline, would defend most mineral exporting developing countries, but not exporters of cobalt and, to some extent, of manganese. Compensation measures might therefore be adopted, but if cobalt and manganese exporters were compensated by the Authority, the revenues available for distribution would be greatly reduced. The dilemma could be resolved by other methods of compensation, not exclusively from the Sea-Bed Authority's revenue, but from a share of the savings resulting from lower prices of minerals to importers—in the short run, cobalt and manganese—what the UNCTAD representative had described as a consumer surplus. Such a scheme would involve considerable institutional and political difficulties. However, since the question had been hypothetical, he had given a hypothetical reply: the possibility existed, but its application was another matter.

44. The answer to the second question depended on the pace of nodule mining. Given freedom of access and guided exclusively by market conditions, sea-bed mining would continue to expand as long as it was profitable in comparison with land mining. If sea-bed mining proved to be a way of producing metals at low cost, the impact on traditional producers would probably be greatly compounded in the second and third decades of sea-bed mining. It was not really possible to say without knowing the actual costs of sea-bed mining and future market prices.

45. Mr. BOATEN (Ghana) asked in the first place whether it was possible, on the basis of available technology, to gain some idea of the comparative costs of exploiting minerals on land and in the sea-bed.

46. Secondly, he would like to know what were the prospects of improving the technology for exploiting sea-bed resources in order to reduce costs in the next decade. It seemed to him that such technology might be improved to a point where there would no longer be any interest in exploiting land resources which would be too costly in comparison with sea-bed exploitation.

47. Lastly, he asked for projections concerning future world demand for sea-bed minerals.

48. Mr. BRANCO (Secretariat) said that there were no precise figures concerning the comparative costs of sea-bed and land exploitation. In an industry where several metals were produced jointly it was difficult to determine which part of the total cost was applicable to each specific metal. There were various methods of economic analysis for apportioning the cost of joint production, the most common one being to assess costs in accordance with market strategy for competitive products. The information given in the Secretary-General's report was based on the industries' cost figures, which were strictly estimates, and might to some extent be optimistic in order to attract investors. The comprehensive figures for costs and revenues presented in the report would be only approximations until the Sea-Bed Authority could tackle the problem and produce more definite figures.

49. With regard to the second question, the representative of Ghana was right in thinking that the nodule industry was only at the start of the learning curve: the first one or two operations would be costly, but the costs would be expected to fall with experience and with technological progress. While nothing was certain, it must be assumed that mineral production from nodules would become cheaper than mining on land: otherwise there would be no incentive for the expansion of the sea-bed mining industry.

50. Regarding future demand, he drew attention to table 6 of the Secretary-General's report.

51. Mr. RATINER (United States of America) said he did not think that the exchange of questions and answers—which seemed to be anticipating the seminar—was the most constructive way of proceeding in such a complex matter. There was more than one answer to each question and members should have the opportunity to hear all of the answers. The current discussion would be recorded and studied. Under that format full justice might not be done to an important subject and to all the interests represented in the Committee. He appealed to the Chairman to arrange for one or more further meetings of the Committee in which the fullest possible answers to these extremely important questions raised could be given and placed on record. He agreed with the Secretariat representative that the first question raised by the representative of Singapore was the crux of the matter.

52. He would like to ask whether, bearing in mind that higher prices for raw materials would mean higher prices for finished products needed by the developing countries, it was possible to calculate the cost of preventive or compensatory measures to consumers in the developing countries. Normally, his delega-

tion would leave that type of question to be dealt with by the developing countries—for example, in the Group of 77—but in that case, United States' interests in the sea-bed would be directly affected by the answer. In view of the extreme importance of the subject, he asked whether the Secretariat could provide, before the next meeting of the Committee, an idea of the cost to developing consumer countries of maintaining or raising the prices of nickel, copper, cobalt and manganese.

53. He would also like to know if an analysis had been made of the extent to which preventive or compensatory measures would benefit the developed rather than the developing countries. Would it be possible to help developing countries selectively—for example Zaire—by controlling production, without producing financial gain for the developed countries? He would like a precise and careful answer to that question.

54. Another question was to what extent revenues available for sharing would be lost or diminished by production control or compensation. It would also be necessary to consider, for example, the extent to which new equipment and technology needed to deal with the new economic zones being created, such as drilling platforms and drill pipes, would be made from metals produced from manganese nodules. How much was the

international community interested in ensuring cheap production costs and low prices for finished products?

55. He had many more questions to ask in the seminar and in the Committee. He would not ask for immediate answers but hoped that the Secretariat would provide them before decisions were made and before delegations adopted positions. Such information could ensure that any decisions taken were in the interests of the whole international community and not of a few land-based producers.

56. The CHAIRMAN remarked that the seminar would be different from the current meeting, in that there would be several experts present to answer questions. He thought that the United States representative's questions had perhaps not been asked purely for purposes of information and it would not be useful to insist on answers at the present meeting. The Secretariat would, however, provide answers for the record, as requested.

57. The purpose of the present debate was to obtain clarification about the Secretary-General's views. He would ensure that there would be ample opportunity for full debate in the Committee later.

The meeting rose at 1.05 p.m.

10th meeting

Tuesday, 30 July 1974, at 3.15 p.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Economic implications of sea-bed mineral development (continued)

1. Mr. D'STEFANO PISSANI (Cuba) expressed concern over the possibility of a short-run reduction in the price of cobalt, which would affect Cuba, a country that produced cobalt. If cobalt was sold at a lower price, it could be used as a substitute for other metals; thus, cobalt consumption might increase at the expense of that of other metals because it was offered at more competitive prices. He requested further information on the quantitative and qualitative consequences of the trend towards the production of substitutes for mineral and agricultural products from the developing countries.

2. Mr. BRANCO (Secretariat) said that using substitutes for raw materials was the result of technological progress. It was true that cobalt could be used as a substitute for nickel, for instance, so that while the price of cobalt might fall, market demand for it would rise. It was, however, more difficult to conceive of substitutes for other raw materials.

3. Mr. HARAN (Israel) asked why there was a discrepancy between the forecasts made by the representative of the United Nations Conference on Trade and Development (UNCTAD) at the 6th meeting and those made by the representative of the Secretary-General, on the expected shortfall in the income of developing countries. He also asked if any estimate had been made or would be made of possible savings to developing countries from a reduction in prices which would enable them to increase their exports and make their products cheaper. In connexion with the possible allocation of the resources of extended economic zones to coastal States, he asked if any estimate had been made of the possible increase in income of those coastal States as a result of their jurisdiction over extensive marine resources.

4. Mr. BRANCO (Secretariat) said that the Secretariat had not tried to quantify the shortfall in the revenues of developing countries because there were still too many imponderables.

Only UNCTAD had made econometric studies and produced some figures. It was very difficult to project what would happen in the next five or ten years and given the many unknowns about the nodule industry, no precise figures could be given. The Secretary-General and UNCTAD had, however, agreed on the general trend. The expected shortfall in the export earnings of developing countries consisted of two elements; what developing countries would lose as a result of a fall in prices; and what they would forgo because prices would not increase as they would have in the absence of sea-bed mining. Developing countries might indeed import some products that could be made from minerals produced from nodules, but that would represent a small part of their imports. Replying to the last question asked by the representative of Israel, he said that the Secretary-General had prepared a report in 1973 on the economic significance, in terms of sea-bed mineral resources of the various limits proposed for national jurisdiction.¹ If resources falling under national jurisdiction were exploited, the income of the coastal States concerned would increase. The Secretariat had not, however, carried out any detailed study on the estimated increase in income.

5. Replying to questions asked by the United States representative at the previous meeting, he said that he would reply only in general terms, as quantifying the answers would require further study, time and research. The answer to the first question, i.e., whether higher prices for raw materials produced from nodules would mean higher prices for finished products imported by developing countries, was a qualified yes. The report of the Secretary-General (A/CONF.62/25) dealt with the likely impact of only the first decade of nodule mining. During that period only the prices of cobalt and manganese were likely to be affected. Cobalt was used in sophisticated industries for products primarily used by the developed countries. It was, however, only a small component of the total cost

¹ Document A/AC.138/87 and Corr.1.

of the products in which it was used, and increases in the price of cobalt would have little noticeable effect. The same applied to manganese, most of which was used in the steel industry. Developing countries were now expanding their steel industries, but as manganese accounted for only a very small part of the total cost of steel production, any increase in the price would not have much effect. The cost of drilling equipment would likewise be affected only minimally by rises in the prices of cobalt or manganese. If there were limitations on sea-bed exploitation, prices could rise, but it was very difficult, if not impossible, to quantify possible increases. It was important to look beyond the first decade to the time when tight control, or lack of any control, over production would raise the prices of nickel and copper; both those metals, particularly copper, were important in world trade, and developing countries spent substantial amounts on importing them. Quantification in that area was not, however, possible at the present time.

6. Turning to the question asked by the United States representative concerning the extent to which compensatory and preventive measures would benefit the developed countries, he said he assumed that the United States representative did not contemplate the possibility that compensatory measures would be called for in the case of developed countries. The preventive measure envisaged was regulation of the rate of resource exploitation in order to prevent pressures on prices for certain minerals. That would benefit some industrialized countries. In the case of cobalt, a quarter of the world's supply came from industrialized countries—Canada, the Soviet Union, Finland and Australia—but the amounts were small and the benefit of preventive measures to industrialized producing countries would be negligible. In the case of manganese, however, the developed countries were the major producers. The Soviet Union produced almost half of the world's supply but used most of it domestically, exporting only a little to Eastern and Western Europe. Australia and South Africa were important exporters of manganese, however, and preventive measures would benefit them. Canada, together with France and the Soviet Union, accounted for about 80 per cent of world nickel production, and they would also benefit from preventive measures. Changes in prices would not affect the foreign trade of countries which were major producers and also consumers; only net exporters and importers would be affected by rises or falls in prices.

7. On the question of a possible trade-off between consumers and producers, he said that if prices rose the gain of producing developing countries would be greater than the loss to consuming developing countries. Moreover, while the consuming developing countries might incur some losses as a result of high prices, other compensatory flows in the world economy might help to restore their trade balance.

8. On the question of how the revenues of the International Sea-Bed Authority might be affected by high prices, he said that if the International Authority exercised very strict control over sea-bed mining, production might be low and its revenues correspondingly small. Revenues available for distribution would also be affected if compensation had to be paid to developing countries, but the representative of the Secretary-General had spoken of the possibility of paying compensation to developing countries from funds other than those of the Sea-Bed Authority.

9. Mr. DE SOTO (Peru), noting that much of the technological information required for sea-bed mining was secret and belonged to only a few companies and also that the prices of certain minerals might fall, requested information on how technological progress might affect developing countries that were land producers of minerals obtainable from nodules.

10. He also requested fuller information on the seminar to be held by the Committee.

11. The CHAIRMAN said that the seminar was being organized informally by the Bureau to enable members of the Committee to hear experts give their objective views on the situation. The seminar would be followed by a full formal discussion of the question by the Committee. He requested the chairmen of all geographical groups to co-operate with the Chair by keeping their groups fully informed about any informal meetings.

12. Mr. BRANCO (Secretariat), replying to the representative of Peru's question about the impact of technological progress on developing countries in respect of the relative costs of sea-bed and land mining, said that technological progress would most probably reduce the cost of sea-bed mining, and eventually nodule exploitation might be economically feasible even if only nickel and copper were recovered. Precise figures could not, however, be given at present, and it was therefore difficult to formulate measures that would protect the interests of all concerned. It should be borne in mind that one element of cost was the fiscal charge levied on producers; if the cost of producing metals from the sea-bed was low and if the International Sea-Bed Authority had a share in the net revenues of the operation or levied a fiscal charge, it could even out the difference in costs between land and sea-bed production.

13. Mr. VARADAN (India) said that the crux of the matter was demand projection, which was based on purchasing power and not on need. The *per capita* consumption was very different in developing countries from what it was in developed countries, where the demand was greater. If the Conference was to create a law of the sea that would stand the test of time, it must abandon the inequalities of the old system and stimulate demand. He suggested that the resources of the Sea-Bed Authority should be used to stimulate demand, and he asked for Mr. Branco's views on stimulating demand, as distinct from anticipating demand.

14. Mr. BRANCO (Secretariat) said that the question asked by the representative of India went beyond economic analysis and was related to the political question of income distribution. If the international community decided that one of the objectives of the International Sea-Bed Authority should be to stimulate demand in developing countries, that could be done by making products available at low cost.

15. Mr. WEEDA (Netherlands) raised the question of the impact on the world market of new developments in land mining, such as exploration, new technology and the recycling of metals. He also raised the question of whether the mineral resources would be sufficient to keep up with the growth in demand.

16. Mr. BRANCO (Secretariat) said that, although the report of the Secretary-General dealt exclusively with sea-bed mining, new technological innovations in land mining, the handling of materials and metallurgical processes would also affect the world market. Although new sources of metal were being found on land, geologists maintained that supply would not keep up with the growth in demand for certain metals; the situation was different for each metal. On the question of recycling, he said that if it became more economical, there would be a decline in the demand for raw materials and newly mined minerals.

17. Mr. FLORIN (Federal Republic of Germany) asked whether anything could be done to remedy the unemployment likely to result from a decline in the land-based mining of minerals as a result of the exploitation of the sea-bed, for instance, by locating the necessary processing industry and land-based storage facilities for those minerals in the developing countries which might suffer economically from the results of deep-sea mining.

18. Mr. BRANCO (Secretariat) replied that the matter was one aspect of the fundamental problem of benefit-sharing. Although no study had yet been made of that particular aspect,

mining activities in general were far more labour-intensive than processing industries. Unfortunately, the two developing countries likely to be most affected by deep-sea mining of cobalt and manganese, namely Zaire and Gabon respectively, might not be ideally situated geographically for processing and storing minerals which would probably be mined in the Pacific Ocean. The matter was, however, one for decision by the international community as a whole and by the future Authority.

19. Mr. CHAMBERLAIN (United Kingdom) said that some of the questions he had wished to raise had already been asked by other delegations and that others appeared more suited to the seminar and the subsequent discussion. He wished, however, to raise two general points. The first was what in general terms were the over-all advantages to the developing countries of obtaining minerals from sea-bed sources and whether those minerals would not be of particular importance in the steel and power industries, which were of special interest to the developing countries both currently and in the future. The second was whether, even if no new sources of metals were exploited from the sea-bed, increased demand by the 1990s would not have led to prospecting for additional land-based sources, which would also call for the compensatory and regulatory approach now being discussed in connexion with minerals obtained from the sea-bed.

20. Mr. BRANCO (Secretariat) said that, in fact, developing countries were very small consumers of the two minerals which would be most affected by sea-bed mining in the near future—cobalt and manganese—although they could be more significantly affected by reductions in prices in the longer term, if massive expansion of nodule mining were also to affect prices of nickel and copper. When speaking of benefit in the economic sense, the net benefit to all developing countries must be considered and the benefit of lower prices for importer countries must be offset against the loss suffered by producers which might be substantially greater. The minerals specifically affected were certainly important in the steel industry, the energy sector and the chemical industry, all of which were of great interest to developing countries.

21. In reply to the United Kingdom representative's second question, he said that the estimated increase in demand would certainly make new sources of supply essential, even if they were not obtained from the sea-bed.

22. Mr. ADENIJI (Nigeria) said that the question he had intended to ask had been substantially covered by the point raised by the representative of the Federal Republic of Germany. However, since the representative of the Secretariat had said that no detailed study had been made of the possibility of compensating countries likely to be adversely affected by the economic consequences of deep-sea mining through the creation of job opportunities in the processing and other related sectors in those countries, he wondered if it would be possible for Mr. Branco to enlarge on those aspects at the seminar.

23. Mr. MHLANGA (Zambia) said that his country, whose economic development was largely dependent on land-based mineral production and marketing, was naturally very concerned at the possible adverse effects of the mining of minerals in the sea-bed beyond the limits of national jurisdiction. If the compensatory measures proposed to obviate the adverse effects were to succeed, the international area must be economically viable. Did the representative of the Secretariat not consider that economic viability would be impossible, if the wider limits of the zone of national jurisdiction proposed both to the sea-bed Committee and to the Conference itself were to be adopted?

24. Mr. BRANCO (Secretariat) replied that if the 200-mile limit was adopted, some natural resources might be exploited within the area of national jurisdiction and therefore escape any control which the International Authority might be empowered to apply. He understood, however, that very few of

the best quality minerals lay within that area. The powers to be given to the Authority and the extent of its control must however depend on the decision taken by the Second Committee on the breadth of the economic zone.

25. Mr. SEPULVEDA (Mexico) said that there were two prerequisites for the exploration of the sea-bed and the resources of that area, namely capital and technology. Much had been said about the magnitude of the financial resources needed but his delegation was preoccupied by the concentration of the required technology in a very limited number of countries. International experience had not been encouraging with regard to the transfer of technology from developed to developing countries, or with regard to the former's willingness to do so. He would therefore like an evaluation of the general channels through which technology might be transferred to the International Authority and an indication of what machinery could be set up to ensure that that was done.

26. Mr. BRANCO (Secretariat) reminded the Committee that the subject was under discussion in the Third Committee. It was a matter of understandable concern that the highly sophisticated technology necessary for exploiting the resources of the sea-bed was in the hands of a very limited group of countries and often even of individual firms. The most effective way to ensure the transfer of that technology to the developing and less advanced countries was through joint ventures organized either directly in association with the technologically advanced countries or by the International Authority. Transfer of technology was never a rapid process and even firms in the industrialized countries had difficulty in keeping up with the leaders in the field.

27. Mr. PINTO (Sri Lanka) said that that was a most difficult question and might give rise to serious political problems if the developing countries that were metal-producers and the metal-consuming countries did not perceive their identity of interests. Solidarity among developing countries was more necessary than ever at the present time.

28. He wished to consider the potential end-product of the Committee's work, namely, the devices to be incorporated in the future Authority whereby it could be notified of a threat to a metal-producing member and take the necessary protective measures.

29. That question was dealt with to some extent in the Secretary-General's report. His delegation had great sympathy with the countries that found themselves in such a dilemma and would do all it could to support an equitable system for protecting the interests of other developing countries; but that would be no easy task.

30. If a metal-producing country that was a member of the Authority became aware of a threatened drop in prices as a result of surplus production, it might report the matter urgently to the appropriate organ of the Authority, which might be a technical organ such as a planning council or an economic commission. That organ would then study the report with a view to recommending appropriate action, perhaps to the plenary organ of the Authority.

31. One immediate problem would be how to assess the threat to prices. Assuming that a country had determined that there was a threat to the price level of the metal it produced as a result of excess supply, two main questions had to be answered. First, was a decline from the current price level to be recognized as a threat, or was a fictitious price level—to be called the "reasonable price"—to be established? If the "reasonable price" was to be the operative notion, how was that price to be arrived at?

32. Secondly, article 10 of the draft articles prepared by the unofficial working group (A/CONF.62/C.1/L.3)—a text with which his delegation had considerable sympathy—stated in connexion with the Authority's price-regulating powers: "The mineral resources of the sea shall be considered as being com-

plementary to resources produced from land and off-shore areas." If that was so, would action first be taken by regulating the price of the metal produced from the sea-bed? Furthermore, could adequate protection—meaning the maintenance of "reasonable prices" for the metal—be provided by taking account of production from all sources?

33. Mr. BRANCO (Secretariat) explained that the decline in prices might have many causes. A short-term decline might be due to an economic recession or other factors affecting the purchasing power of the importing countries. There might also be a long-term decline in prices due to technological progress or to pressure on supply from the discovery of new sources of the mineral concerned. Failure of prices to increase as expected might also be considered a threat to remunerative price levels. All those factors must be taken into account when the Authority decided that the price level was threatened.

34. With regard to the second question, the action to be taken would depend on the nature of the threat to the price level. Short-term imbalances might be handled by reduction in the total supply of minerals from both land-based and sea-based sources, with the agreement of all the parties concerned, or through the use of buffer stocks, whereas a long-term decline in prices might call for the use of the Authority's compensatory powers. In any case, the Authority must be empowered to take the necessary action through participation in international commodity agreements and to share in the financing of buffer stocks. Other regulatory measures could be taken outside the Authority, for instance through agreement between major importing countries to provide some form of compensation for the loss in export earnings of producing countries due to a decline in prices.

35. Mr. TURQUET DE BEAUREGARD (France) said that it was unlikely that supply from land-based mineral resources would be able to keep up with the increasing demand. It would therefore be unwise to place too many restrictions on the exploitation of resources from the sea-bed. Did the representative of the Secretariat not agree that such exploitation would be progressive and at first adversely affect only marginal exploitation, with a barely perceptible influence on prices? He would also like further details on ways of dealing with price fluctuations other than by compensatory and regulatory methods.

36. Mr. BRANCO (Secretariat) confirmed that the exploitation of the sea-bed resources would be a cumulative process depending on the availability of technology and the condition of the market. As stated in section II of the Secretary-General's report, little reliable data was available since nodule mining technology was still in the developmental stage. The possibility suggested by the French representative that exploitation of sea-bed resources would at first merely lead to a decline in marginal production without a perceptible drop in prices, depended on the nature of the markets for the minerals concerned. For instance, cobalt, which was likely to be the first mineral affected, was a very special market, controlled by the major producer, Zaire, which had so far been able to adjust the supply to avoid major fluctuations in short-run market prices. Should the situation be changed by production from the sea-bed, Zaire might find it advantageous to maintain its share of the market. The same could be said of other producers, especially since cobalt production was a by-product of copper or nickel mining. The situation with regard to manganese, the next mineral most likely to be affected, was however very different since the production costs of the different producers varied

greatly. In that case, producers with high costs might be driven out of the export business. Under a free market economy, it was however more likely that there would be a decline in prices before there was a halt in marginal production.

37. With regard to the French representative's second question, concerning price regulation, he said that there were obvious methods, such as long-term planning and compensatory measures. In addition there were other alternatives, some of which were mentioned in the Secretary-General's report. It would be possible, for instance, to levy a duty on the imports into industrialized countries of minerals produced by sea-bed mining and to use the revenue from that levy for the benefit of the developing countries. Compensatory payments could also be made from funds obtained from other than sea-bed sources.

38. Mr. LUGOE (United Republic of Tanzania) said that with so many complex problems to be solved it was obvious that a very strong Authority would be required. There was no organization with sufficient power to take the necessary action at the present time. However, it was not enough merely to establish the Authority; he would like to know the type and extent of the control it would exercise and also what methods it would employ.

39. Mr. BRANCO (Secretariat) said that the Tanzanian representative's question related to the statement made by the Special Representative of the Secretary-General at the previous meeting. As the Special Representative had indicated, the most complex problems with which the Authority would have to deal could only be visualized in broad outline at the present time, and it was not yet possible to say with precision what means it would be most appropriate to employ to deal with them. However, one thing was already clear: the Authority must be sufficiently powerful to take whatever steps were required for their solution.

40. As to the type and extent of the controls and how they were to be exercised, it was necessary to consider how the pressures on prices from sea-bed mining might arise. Some might be due to long-term imbalances in supply and demand, owing to the great importance of nodule mining for such minerals as cobalt and manganese. On the other hand, it might be necessary for the authority to act to reduce the impact of short-term price fluctuations. In the latter case, price regulation exclusively through the action of the Sea-Bed Authority might create as many problems as it solved. For instance, if the Authority was required to compensate the developing countries for short-term fluctuations or declines in the prices of the metals they produced, all its funds might be absorbed by that alone in a very short period of time. The Authority would therefore have to act in concert with all producers concerned, and take such steps as the creation of buffer stocks or any of the other measures mentioned in the Secretary-General's report.

41. As had already been suggested, the Authority might undertake the long-term planning of nodule mining and lay down a schedule for new operations perhaps based on the complementary approach. But owing to the joint-product nature of the industry, with production of the four major minerals in proportions quite different from existing world demand, it would not be possible to guarantee price stability for all minerals. Since the developing countries were producers of all of those minerals, it was difficult to know where the international community should draw the line.

The meeting rose at 5.35 p.m.

11th meeting

Tuesday, 6 August 1974, at 3.15 p.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Report of the Chairman of the informal meetings

1. Mr. PINTO (Sri Lanka), speaking as Chairman of the informal sessions of the Committee, said that when he had last reported to the Committee at its 9th meeting, he had outlined in general terms the nature and progress of the work at hand. In the course of 13 informal sessions to date, the Committee had carried out the anticipated "third reading" of draft articles 2 to 21 inclusive of the draft articles prepared by the working group of Sub-Committee I of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. Those draft articles dealt with the status, scope, and basic provisions of the régime. A number of textual changes were being recommended to the Committee at the present stage, and were to be found in document A/CONF.62/C.1/L.3. It would be helpful to follow those changes in the report of the sea-bed Committee (A/9021 and Corr.1 and 3, vol. II, pp. 51 to 69).

2. The Committee had not wished to discuss draft article 1 on the limits of the area, since a final decision concerning those limits would depend on the results of the discussion of "limits" as a whole in the Second Committee. However, the proponents of some of the alternative texts had taken the opportunity to make certain changes, additions and corrections. Thus, in paragraph 1 (ii) of alternative (A) an erroneous reference to the "400 metre isobath" had now been corrected and changed to "the 500 metre isobath", while the two references to distances of "100 nautical miles" had been amended to "200 nautical miles". Foot-note 2 which envisaged the establishment of a "coastal sea-bed area" of unspecified maximum breadth in connexion with alternative (B), had been completed by insertion of the figure 200. An erroneous reference to "ocean space" in alternative (C) had been corrected to read "ocean floor".

3. At the outset of the discussion on draft article 2 on the common heritage of mankind, alternative (C), according to which the concept of an area to be treated as the common heritage of mankind would be incorporated in a preambular paragraph, had been withdrawn by its sponsors acting in a spirit of co-operation which had won the appreciation of the Committee. Discussion of the alternatives (A) and (B) had covered three main aspects: statement of the concept; its presentation in the context of those articles; and the function of the draft articles as interpretative of the concept. With regard to the first point there had been no objection to stating the concept as follows: "the Area and its resources are the common heritage of mankind". That formulation presupposed that the term "area" had been defined by reference to its limits in a separate article, perhaps an article along the lines of draft article 1. According to one view, article 2 ought to contain a statement of the concept and no more, or certainly no wording that might even by implication limit the concept or its necessary development. That view was reflected in alternative (A). Alternative (B) on the other hand, although beginning with a statement identical to the text of alternative (A), went on to place it in the context of the articles to follow, and to declare those articles to be interpretative of "this principle . . .". Foot-notes 6 and 7 of the original text of article 2 in the sea-bed Committee's report had been suppressed.

4. Early in the consideration of those draft articles, it had been agreed that interpretation of terms should be set out in an article designed for that purpose, along the lines of draft article O in volume II, page 164, of the report of the Committee.

Accordingly, it had been decided that the proposal for interpreting the term "resources" contained in paragraph 2 of the original version of draft article 2 should be moved to article O. Subsequently it had been agreed that all proposals for definition or interpretation of terms used in the articles should be held in suspense until much later in the negotiations, when it would be appropriate to determine what terms really needed to be so defined or interpreted, and how best to do so.

5. In alternatives (A) and (B) under draft article 3 the phrase "exploration and exploitation of the resources of the area" had by consent been replaced by the phrase commonly used elsewhere in the text to describe that same idea, namely "the exploration of the area and the exploitation of its resources". Apart from that editorial change it had been agreed that the proposed interpretation of the term "activities" proposed in connexion with paragraph 2 of the original version of alternative (A) should be held in suspense in accordance with the agreement of the Committee on that point already mentioned. For similar reasons a statement that contemplated the possibility of an interpretation of the term "activities" as a second paragraph under alternative (C) had also been omitted.

6. The Committee had made considerable progress in dealing with draft article 4 which sought to prohibit the acquisition of sovereignty or sovereign or proprietary rights in the area, and to regulate the acquisition of rights of any kind of the resources of the area. The Committee had decided to treat the prohibition of acquisition of sovereign or proprietary rights in the area separately from the regulation of rights in resources. Accordingly, those subjects were dealt with in paragraphs 1 and 2, respectively, of the new version of draft article 4, which sufficiently took into account all views so as to obviate the need for entire alternatives. Division remained within the Committee only on whether to use the word "over" or the words "with respect to" in paragraph 2. In that connexion some believed that the word "over" might give the impression that only rights associated with ownership of the resources were contemplated, while in their view the term "with respect to" gave more flexibility since it would include, in addition, lesser or more limited rights, such as might be consistent with the retention of certain rights by the Authority. Others had felt that there was no difference in the meaning of the two expressions and pointed out that in at least one language the same word would be used to convey the meaning of both expressions.

7. No improvement could be made in the position regarding draft articles 5 and 6.

8. The co-operation of delegations holding opposing views on the question of whether or not scientific research in the area was to be subject to the jurisdiction and control of the International Authority had made possible substantial improvement of the text of draft article 7. Those delegations had agreed that that controversy might be confined to draft article 11 which dealt specifically with the subject of scientific research in the area, and should not be introduced into other draft articles such as draft article 7. Accordingly, the reference to scientific research in the first line of paragraph 1 had been removed with the consent of its supporters. Correspondingly, paragraph 3 which sought to endorse the idea of freedom of scientific research, and the adjective "industrial" which, when used to qualify exploration of the area, would by implication exclude from the scope of the régime exploration activities not carried out for commercial purposes, that is scientific research, had

also been withdrawn by their supporters, with the result that the text of paragraph 1 was agreed to by all. Foot-note 8 on page 53 had also been deleted.

9. The only other paragraph in that article purported to deal with all groups of States having special interests, although those foremost in the minds of the drafters had perhaps been the land-locked and geographically disadvantaged States. The latter believed that the reference to the special interests of "coastal States" in that context was inappropriate, and that the paragraph should be oriented towards redressing only the inequities suffered by all land-locked and otherwise geographically disadvantaged countries. Coastal States, while maintaining that exclusion of a reference to their special interests from that article could lead to a lack of balance, had urged the land-locked and geographically disadvantaged countries to consider covering that point, and indeed all others relating to their problems, including rights of access to the sea in one article, perhaps along the lines of article 19, and also to prepare, as soon as possible, a satisfactory interpretation of the term "geographically disadvantaged State". The land-locked and geographically disadvantaged States had agreed to give consideration to those and other matters relating to their particular interests.

10. By agreement, foot-note 11 had been deleted.

11. The report of the working group of the sea-bed Committee contained a proposal for combining draft articles 5 and 7, provisionally designated as draft article 7 A. While there was no disposition to press for the amalgamation of those two texts, some did not wish to see the idea disappear altogether, and it had been agreed that the text of former draft article 7 A should be set out in a foot-note to draft article 7. That foot-note held out the possibility that the text of former draft article 7 A might represent the amalgamation not only of draft articles 5 and 7, but also of draft article 8 on the preservation of the area exclusively for peaceful purposes. Foot-notes 12 and 13 had been omitted. It had not been possible to make any changes in article 8.

12. Two significant changes had been made in the alternative versions of draft article 10 dealing with general norms of exploitation. First, the supporters of alternative (A) had replaced that text by a new text making more specific reference to the economic impact of sea-bed exploitation on consumers and producers of raw materials, and thus more clearly covering some of the economic aspects emphasized in alternative (B). Secondly, the supporters of alternative (B) had replaced the words "minimize the fluctuation" in that text by the words "prevent the deterioration", thus making clear their objective of maintaining prices for land-based minerals at an appropriate level, and looking towards the establishment of a mechanism designed to prevent any deterioration in the price of those minerals.

13. It had been impossible to make any changes in draft article 11. However, the reference to a possible definition of the term "scientific research" had been deleted following agreement within the Committee on the whole question of an article on interpretation. No change was possible with regard to draft article 12.

14. In draft article 13, the Committee had accepted a proposal to add to subparagraph (a) a list of examples of activities in respect of which measures would have to be taken for the prevention of pollution and other hazards to the marine environment. The note that followed that draft article had been deleted. No change had been made in draft article 14.

15. In paragraph 1 of alternative (A) of article 15, the adjective "industrial" used in two places to qualify exploration and exploitation had been deleted following an agreement on that point within the Committee. Secondly, to the alternative versions (A) and (B) of paragraph 3 a third alternative version (C) had been added proposing the omission of the provisions of

that paragraph, the only case, he believed, during the whole course of the discussions where an alternative had been added. In the course of the discussion it had been pointed out that paragraphs 1 and 2 of that draft article dealt with the right of a coastal State not to be harmed as a result of sea-bed exploitation activities, including the right to take certain measures in cases of emergency to prevent or minimize the possible effects of a hazard, while paragraph 3 dealt with the rights of a coastal State in quite a different case where a resource lay partly within the area subject to coastal State jurisdiction and partly outside that area. It had been suggested that an effort should be made at a later stage to separate those two ideas and incorporate them in two distinct articles.

16. No substantial changes had been made with regard to draft articles 16 to 21. However, a few purely editorial changes had been made. Thus, in draft articles 16 and 20, foot-notes calling for omission of those articles had been suppressed, and replaced by "alternatives" to the same effect, so as to maintain a uniform method of presentation. Draft article 18 had been the subject of another purely editorial change, namely the replacement of the words "exploration and exploitation of its resources" by the words "exploration of the area and the exploitation of its resources".

17. The square brackets around draft article 21 had been removed, which indicated a developing consensus on the need for the draft articles to include a system for the settlement of disputes. There was, of course, no indication as to what particular system for the settlement of disputes would eventually be favoured.

18. Draft article 9 entitled "Who may exploit the area" was the most important draft with which the Committee had had to deal thus far, and had generated the greatest amount of interest and controversy. There were four alternative versions of draft article 9 in the report of the working group, and there were still four such alternatives although the texts were different in two cases. Alternatives (A) and (D) remained as drafted the previous year. Alternative (B) was a new draft proposed by the Group of 77, while another new proposal made to the Committee had been designated alternative (C) and occupied the position of the former alternative (C) which had been withdrawn.

19. In his last report, he had emphasized the importance to the work of the Committee of the introduction of alternative (B), a text that enjoyed the support of States that were members of the Group of 77. The introduction of that proposal had marked a turning point in the discussions. While the basis of that draft article was that "all activities of exploration of the area and the exploitation of its resources . . . shall be conducted directly by the Authority", its sponsors had made it abundantly clear that the text had built into it an essential flexibility in that it provided that the Authority at its discretion might utilize "natural or juridical persons" in the conduct of sea-bed operations under contractual arrangements that would ensure the Authority's direct and effective control at all times.

20. Considerable interest had been shown in the proposal of the Group of 77. Some found the draft perhaps too concise, and sought clarification from the States members of the Group of 77 on a variety of points dealing mainly with four subjects: first, the means by which the Authority would maintain "direct and effective control at all times"; secondly, the modalities of sea-bed operations under that system and, in particular, how the contemplated "special tasks" might be co-ordinated and supervised in the course of what some might regard as necessarily a single operation from the earliest exploration phase to the stages of processing and marketing; thirdly, the basis for the underlying assumption of the financial viability of sea-bed operations conducted in accordance with the system implicit in the proposal; and fourthly, the fact that only "juridical or

natural persons" had been mentioned as entities which might be chosen as contractors for special tasks under the system seemed to exclude States and State enterprises.

21. All the replies given had stressed the essential flexibility of the proposal of the Group of 77. Its philosophy, if correctly interpreted, was sufficiently flexible to offer all the guarantees, including guarantees relating to investment, that could be reasonably expected by those entities currently possessing the technological and financial means to explore and exploit the sea-bed. Direct and effective control at all times would be maintained through contractual arrangements between the Authority and the entity employed to carry out a particular task or tasks. The provisions concerning the period of operation and other considerations of contracts concluded by the Authority would be such as to guarantee efficiency and an optimum yield. Those operations would be self-financing. It had been pointed out that the phrase "other related activities" in the first paragraph had been intended to cover all types of tasks up to and including the processing and marketing of minerals. Payment out of the proceeds would be made possible by contracting for the carrying out of a series of specialized tasks that extended up to and included a stage at which the operations would become remunerative. Although it had not been stated in specific terms, it seemed that what was contemplated was a system of profit sharing or production sharing between the Authority and the entity employed to carry out special tasks, a system which in the past seemed to have ensured the financial viability and efficiency of countless mineral exploitation operations. The supporters of alternative (B) had also explained that under the system they envisaged, the Authority when selecting contractors for sea-bed operations would take into account the ideological background of an applicant, while many had stated quite specifically and categorically that the phrase "juridical or natural persons" should be interpreted to include States and State enterprises, and not merely corporations established under the laws of a State whose economy was based on a system of private enterprise.

22. There were two issues of substance at the heart of the Committee's deliberations, namely the issue of control and the issue of the Authority's discretion to select contractors and make other decisions implied in its functions. With regard to the extent of the Authority's potential or actual control, the various positions were apparently drawing closer together. Considerable work still had to be done in connexion with the problems involving the scope of the Authority's discretionary powers. But a start had been made in that direction as many delegations had emphasized the need to incorporate into the treaty certain fundamental norms, as opposed to regulations dealing with matters of detail, governing the exercise of the Authority's powers. Incorporation of those fundamental norms, implemented through appropriate regulations, would ensure an element of clarity, certainty, and predictability, that would create the climate of confidence necessary to encourage and attract those who possessed the necessary technology and financial means to enter into association with the Authority for the exploitation of sea-bed resources. The Jamaican proposal which had been reproduced in the note following the draft articles in document A/CONF.62/C.1/L.3 had been submitted in the context of the Committee's discussion of draft article 9, although it had not been described by its sponsor as an alternative text for inclusion under that article. According to one opinion, since that proposal dealt with norms of sea-bed exploitation, it would be inappropriate to include it under draft article 9 or to place it in direct relationship to that article. According to another opinion, norms of exploitation were inseparable from the question "Who may exploit the area", and in fact lay at the root of the issues involved in any discussion of draft article 9. The Committee had finally agreed, bearing in mind the fact that the Jamaican proposal had implications for more than one of the draft articles, to present that

particular proposal at the end of the 21 draft articles in the document.

23. Alternative (C), as had been mentioned, was a new proposal which reflected more precisely than any other alternative the concerns of its sponsor. More than any other proposal, it emphasized the need to secure access to sea-bed mineral resources. It should not be confused with the former alternative (C) in draft article 9 of the report of the working group of the sea-bed Committee, which had been withdrawn.

24. Having considered draft articles 1 to 21 inclusive in formal session, the Committee intended to proceed to a discussion of the second and third of the three issues recognized to be of crucial importance, namely the conditions of exploitation and the economic aspects of exploitation.

25. In his last report, he had stated his belief that the Committee was at a momentous stage in its work. It was therefore essential, and particularly in the days to come, to remain calm and exercise restraint at all times. The informal meetings of the Committee had no rules of procedure, only three guiding principles: good faith, goodwill, and, above all, good humour. Those three elements preserved and strengthened an atmosphere conducive to progress within the Committee. That atmosphere was of cardinal importance to the Committee. As discussions continued through the critical period, that atmosphere had to be preserved since, if it was shattered by words spoken in anger, a witticism ill-received, all would be the poorer. The roughest time was still ahead and members of the Committee were requested to preserve their sense of humour and respect the fine line that divided the frank from the offensive.

26. He said that his statement reflected his views alone and was therefore not binding on any delegation.

27. Mr. FONSECA TRUQUE (Columbia), speaking as the Chairman of the Group of 77, introduced alternative (B) to article 9, appearing in document A/CONF.62/C.1/L.3. The Group of 77 was fully aware of the Committee's responsibilities, as had been pointed out by the Chairman in his opening statement on 10 July, in which he had reminded delegations that the First Committee had been entrusted with the greatest responsibility, namely, that of designing international peace with norms and institutions hitherto unknown—and in which he had stated that despite the illusions which problems and new concepts might create elsewhere, "the realities of the new revolution of thought relating to the area of the ocean space would be worked out in that Committee" (see A/CONF.62/C.1/L.1).

28. Indeed, all delegations had recognized that the most important issue before the Committee and the one that must be given priority by it, was precisely article 9, which dealt with the system of exploration and exploitation of the resources of the area and, in particular, with the need to make clear who could exploit the area beyond national jurisdiction.

29. Conscious of the responsibility pointed out by the Chairman, the Group of 77 had spared no effort to achieve progress in the process of negotiating the new law of the sea, and after arduous and prolonged negotiations, the informal working group had been able to arrive at a text adopted by consensus, which the representative of Sri Lanka had just introduced in his report as the new alternative (B) to article 9.

30. A large number of delegations from the industrialized countries had recognized that the new alternative represented what was known in conference terminology as a real breakthrough in negotiations. Those delegations had put questions which had been answered individually by different delegations from the developing countries and also jointly in a statement that he himself had made to the working group on behalf on the Group of 77.

31. Nevertheless the developing countries genuinely wanted the phase of questions, answers and clarifications to be brought to a definite conclusion. They believed that all doubts had been

fully and adequately cleared away—especially bearing in mind the lengthy debates in the preparatory committee—and that what was needed now was the political will on the part of certain delegations to reconcile their differences and bring their positions into harmony with the aspirations of the majority.

32. He wished to make a few remarks in a constructive spirit in order to focus attention on the importance of the present stage of the proceedings and on the prospects that remained for achieving something definite at the Conference.

33. Perhaps it was necessary to review some of the events which inexorably had led the international community to adopt General Assembly resolution 2749 (XXV) by consensus. When the item concerning the sea-bed and the ocean floor beyond the limits of national jurisdiction had first been brought before the world Organization, the representatives of African, Asian and Latin American countries had recognized that the exploitation of the area would require a new international law, which would not merely regulate relations between States but would protect the rights and needs of the developing countries.

34. Bearing in mind the economic impact in the past few decades of the application of advanced technology on the mining of hydrocarbons and other non-renewable resources in the oceans, the representatives of the third world had concluded that the law of the sea, which had been drawn up before the development of current methods of mass exploitation of natural resources, would not be appropriate to the rational and equitable exploitation of sea-bed resources, which would require control by the international community rather than indiscriminate freedom of action.

35. Because there were no traditional legal standards on which to base a just law for the new area, it had been necessary to create the concept of the common heritage of mankind which had been adopted by the community of nations at the twenty-fifth session of the General Assembly in 1970 and which was now regarded by the overwhelming majority of States as an essential part of international law.

36. It must therefore be recognized, as the representative of one of the developing countries had said in the Committee, that the notion of the common heritage required a régime which would provide the necessary safeguards to ensure that the interests of States, or groups of States, and private enterprises were subordinated to the interests of the community as a whole.

37. The Group of 77 realized that it would be necessary to have the support and assistance of those States and enterprises that had the financial and technical capacity for efficient exploitation of the resources of the international area. Consequently, the merit of the proposed text was that it was simultaneously clear, balanced and flexible. Questions relating to the supervision of activities and other details could be taken up at a later stage of the Conference.

38. The first paragraph provided that "All activities of exploration of the area and of the exploitation of its resources, and all other related activities, including those of scientific research, shall be conducted by the Authority". That meant that the Authority, with a view to its conducting exploration and exploitation of the resources, must be given adequate powers to protect the interests of the international community, in accordance with the spirit of the Declaration of Principles, giving special consideration to the interests and needs of the developing countries, both coastal and—more especially—land-locked. The Authority would by no means—as had been claimed—be a supranational body: it had already been demonstrated that it would have jurisdiction only in the international area and a legal status similar to that of the other specialized agencies of the United Nations.

39. The supreme organ of the Authority would be the assembly, in which all States would be represented on an equal

footing. Membership in the council would be based on the most equitable possible geographical distribution, without any conditions for voting, so that decisions would be democratic. The operational organ of the Authority, which would exercise direct and effective control over all exploitation of the resources beyond the limits of national jurisdiction, would function with the same impartiality.

40. The paragraph also mentioned scientific research because it was inevitably linked with resource exploration and exploitation. Other related activities included refining, processing and marketing of raw materials.

41. The second paragraph provided that "The Authority may, if it considers it appropriate, and within the limits it may determine, confer certain tasks upon juridical or natural persons through service contracts or association through any other means it may determine which ensure its direct and effective control at all times over such activities". That paragraph should be viewed as providing, within the concept of the common heritage, a suitable and satisfactory way of meeting all the concerns of the developed countries.

42. A mechanism proposed in the alternative of the Group of 77 would be fully capable of including in the service contract, conditions that would offer incentives to induce the industrial States and industrial corporations to commit some of their capital and their technology—which the Authority in its early stages would obviously lack—to the task of carrying out scientific research and the exploration and exploitation of the vast resources of the sea. No one could doubt that States—which were the subjects or even the juridical persons *par excellence* contemplated by international law—had the capacity, through their specialized bodies, to enter into service contracts with the Authority that would be in conformity with the procedures and characteristics of their respective economic systems and their ideologies. A service contract was of course a legal agreement under which one party performed a task in return for some kind of remuneration, which could take the form of some share in the production.

43. With regard to the type of financing, it must be borne in mind that such legal contracts were based on the principle that exploitation of the area would be carried out during a period long enough to cover companies for their investments and risks. Naturally provision for research, exploration and exploitation would be made in the form of exclusive contracts in order to provide broad guarantees for companies' investments.

44. Furthermore, it had been repeatedly demonstrated that the resources themselves, and the fact of sharing in the profits of their exploitation, were what guaranteed the financing of the resource extraction operations.

45. The concept of association could allow for the establishment of joint enterprises by developed and developing countries or by developed countries and the Authority, always keeping in mind the aim of speeding up the transfer of technology.

46. The words "any other means" implied a wide range of possibilities with the exception of licensing. It should be clearly understood that all the developing countries totally rejected the idea of licensing. They did not believe the claims that equitable distribution of the profits derived from exploitation of the common heritage could be effected through the use of a method which was typical of an era of paternalism and dependence which must be left behind once and for all.

47. Even less acceptable was the attempt to divide the Group of 77 by the fallacious argument that merely the revenue derived from licensing would benefit particularly the relatively less developed among the developing countries and the geographically disadvantaged countries. The developing countries had strengthened their solidarity and were sufficiently mature and experienced to understand that the only way to ensure the transfer of technology was by active participation in explora-

tion and exploitation of the common heritage. That was the path towards the objective of economic independence. The countries of the third world could not accept the licensing system because it would greatly widen the financial and technical gap which separated them from the developed countries. The vast resources of the seas should be administered directly by the Authority in a joint international co-operation effort for the benefit of all mankind.

48. The alternative submitted by the Group of 77 not only met those essential requirements; it represented a consensus of more than 100 States and was finally supported by China, Romania, Spain and other countries. It had the backing of more than four fifths of mankind and would ensure the equitable administration of the common heritage.

49. He was surprised that a Conference of plenipotentiaries whose task was to draft a treaty on the new law of the sea should still, when it was past the half-way mark, be continuing with statements reminiscent of a general debate, as if it had not yet advanced beyond the preparatory stage. In the same way some delegations seemed to ignore the irreversible process of development of the law arising out of the Declaration of Principles.

50. However, he was sure that all delegations sincerely wanted to arrive at sound conclusions which would ensure the success of the Conference, and he therefore thought that no one could doubt the willingness of the delegations of the industrialized countries to negotiate.

51. The developing countries had made a special effort in submitting a balanced and flexible compromise text which would be hard to improve upon.

52. The developed countries should consider the alternative prepared by the Group of 77 as objectively as possible. They should not underestimate the great progress in negotiations made in the past few years. He hoped that they would make a similar effort in the interests of co-operation and international equity.

53. Mr. FIGUEROA (Venezuela) said that the text introduced by the Chairman of the Group of 77 represented a considerable step forward in negotiations. The concept of the common heritage of mankind could not be fully realized unless the Authority was given the powers proposed in that text. The Authority should have direct control at all times over the exploitation of the resources of the area, with due regard for the protection of those resources. Thus, the system of licences would not be the most effective, rational and equitable method of achieving the ends in view. There were other forms of association or contract which had proved successful and he believed that doubts concerning the proposal of the Group of 77 were the result of ignorance of present trends in methods of exploitation and of the ability of the developing countries themselves to find new ways of international economic co-operation in the optimum development of resources for the benefit of all countries.

54. Venezuela had had 50 years' experience in the exploitation of petroleum resources. The concept of the service contract was in sharp contrast, both in Venezuelan law and internationally, to that of licensing. The trend in most developing countries away from licensing was not simply a logical change in the distribution of the profits of exploitation but reflected those countries' awareness of the need to increase their control over the basic decisions affecting their economies. The question assumed even greater importance when it came to the exploitation of the resources of the common heritage of mankind, for without adequate controls such exploitation could affect not merely the economy of a particular country but that of the whole international community.

55. The first and fundamental distinction between service contracts and licensing was that the latter was a procedure by which the Authority granted property rights to a natural or

legal person, the concessionaire, in respect of the exploration and exploitation of the resources in the concession area. Service contracts did not confer any actual rights on the contracting party, either for exploring or for exploiting the resources of the area. The first law in Venezuela concerning petroleum concessions had been the law on hydrocarbons and other fuels of 9 June 1922 and the concept had been retained to the present day. But in 1967 the concept of service agreements or contracts had been introduced into the law on hydrocarbons as a deliberate departure from the idea of licensing because of the antipathy of large sectors of the community to the latter and a new legal institution had thus been created. Autonomous institutes and State enterprises were thus able to exercise rights to explore, exploit, process and refine hydrocarbons either directly or through service contracts, and to promote and participate in joint enterprises, provided that the terms and conditions stipulated in each contract were more favourable for the nation than for the concessionaires.

56. Service contracts signed by the Venezuelan Petroleum Corporation, an autonomous State concern, at the end of 1971, covering areas in the southern part of Lake Maracaibo, afforded considerable advantages for the national interests in comparison with hydrocarbon concessions.

57. First, for example, in the case of licences, the licensee had free disposal of all the substance extracted, the State receiving only royalties, whereas under the service contract petroleum was extracted for the Government, the contractor receiving a percentage for sale in international markets. Secondly, licences were usually for a period of 40 years or more, whereas the service contract was for much shorter periods. In the present case periods had been fixed at three years for exploration and 20 for exploitation which would safeguard investment and provide the necessary State control over exploitation of the nation's heritage. Thirdly, the licence, by reason of its legal nature, greatly limited State intervention in the preparation, execution and supervision of plans, programmes and budgets. With service contracts, however, the official entity had full operative participation, through a committee and sub-committees composed of representatives of the corporation and the contractors. Fourthly, with regard to financial obligations, the licensee paid only the taxes fixed by law, whereas in the service contract the contractor had to provide the capital required to fulfil his contractual obligations and was not allowed to deduct it in any circumstances. He also had to pay contract, production and productivity fees. Lastly, with service contracts, the contractor gave the official entity an option for processing petroleum in a refinery in the United States of America and an option to participate in the capital.

58. Venezuela had had ample experience with the licensing system since the start of its petroleum industry in the 1920s. In the course of time, with growing awareness of sovereign rights, efforts had been made to improve the system, by export and other taxes, by control of activities, by conservation measures and so forth. However, it was clear that the licensing system, despite all those improvements, did not provide absolute sovereignty over resources that were essential to the economy.

59. Venezuela had therefore decided to end all licences. In March 1974 the President of the Republic had set up a commission composed of representatives of various sectors of the nation to study possible measures to speed the termination of licences so that the State could assume control of exploration, exploitation, processing, refining, transport and marketing of hydrocarbons.

60. His delegation considered that it would be pointless to try to revive in the case of the seas a system that had become obsolete in the case of land-based resources. The experience it had had in common with other developing countries suggested appropriate solutions to the problem of exploiting natural resources which could serve as a basis for agreements between the Authority—the depository of the common heritage of

mankind—and bodies which were in a position to exploit the resources of the area.

61. Mr. BOJILOV (Bulgaria) said that there was no need for the Committee to enter into a detailed analysis of the report of the Chairman of the informal meetings since it was self-explanatory.

62. Although the progress of informal meetings had been impressive, it would be wrong to conclude that there was little left for the Committee to resolve. The Committee was in fact facing a wide range of complex issues whose solutions required protracted negotiations in a spirit of mutual accommodation.

63. The ocean space conceptual approach to the issue of the international régime and machinery had been injected into the work of the sea-bed Committee in clear-cut contradiction to the Declaration of Principles and the mandate of Sub-Committee I of the Committee and its working group. Over the previous years the discussion of "ocean space as a whole" had yielded no positive results, given rise to profound disagreements, and should therefore be discarded.

64. His delegation also hoped that the Committee might come to an agreement with respect to the precise wording of article 2. Alternative (B) of article 2 presented a concise, simple and sound text.

65. Article 9 presented one of the crucial problems to be resolved for which the Committee had a number of options. Alternative (A) stipulated that exploration and exploitation activities in the area should be conducted by a contracting party or group of contracting parties, or natural or juridical persons under its or their authority or sponsorship, subject to regulation by the authority and in accordance with the rules regarding exploration and exploitation. Alternative (C) submitted by the United States delegation was similar in content to alternative (A).

66. Alternative (B) submitted by the Group of 77 provided that all activities, including scientific research, should be conducted directly by the Authority.

67. In the view of his delegation, alternatives (A) and (B) embodied the two most extreme positions maintained in the Committee, and the gap between them was rather wide. In view of the central importance of article 9, greater efforts were needed to bridge that gap.

68. At the 36th plenary meeting of the Conference, his delegation had expressed the opinion that the International Authority should be empowered to exercise regulatory and licensing functions and, when appropriate, enter into contractual arrangements with States or undertake exploration and exploitation activities provided that they were feasible and profitable. Alternative (D) therefore might provide a middle term and serve as a basis for further constructive and meaningful negotiations. His delegation was nevertheless prepared to seek and accept other reasonable and viable methods of work to facilitate the Committee's task.

69. Mr. RATTRAY (Jamaica) said that it was essential for the Conference to face the challenge to its political will to apply the principle that the international sea-bed area and its resources were the common heritage of mankind. Some significant progress had been made, reflected in alternative (B) of draft article 9, submitted by the Group of 77, giving the Authority the dominant role in exploiting the resources of the area. The problem was how to reconcile the interests of those whose heritage the area was and the interests of those who had the necessary technology to exploit the area. The apprehensions of those who had the technology were largely based on their experiences of national systems; they should, however, bear in mind that such arguments were irrelevant in the present case, for a new international social order was to be established for which the Authority would be a catalyst. The Conference had recognized what the real issues were, and those who had

apprehensions about the future should now try to work together with those who wanted the common heritage of mankind to be used for the benefit of mankind as a whole.

70. The proposal submitted by his delegation concerning fundamental norms for the system of exploitation should not be construed as limiting the rights of the Authority or diluting its powers. He supported alternative (B) of draft article 9 submitted by the Group of 77, which showed clearly that the principles embodied in the Declaration of Principles could be implemented only by an authority with the necessary powers to control activities in the international area. He hoped that all delegations would realize that alternative (B) of draft article 9 did not present any dangers to them, and that they would accept it.

71. Mr. KALONDJI TSHIKALA (Zaire), noting that article 9 was the most important article of all and dealt with the crux of the problem of the régime of the international area, expressed his support for alternative (B) which was clear, balanced and flexible. The problem was basically one of control; the Authority must exercise constant and effective, not theoretical, control over all activities in the area. Such control was provided for in alternative (B), which was why all under-industrialized countries supported it. The Declaration of Principles, which had established the international sea-bed area as the common heritage of mankind, required that the international area should be administered and controlled by some international authority which would have real power to control activities in the area, rather than simply apply the rules of the game for the benefit of exploiters of the area. He would oppose any system, such as a licensing system, which would not give the Authority adequate powers to control activities in the area. The best way of ensuring control was for the Authority to be represented in all stages of exploration and exploitation, including marketing of products from the area.

72. The Authority should administer the area for the benefit of mankind as a whole, particularly the under-industrialized countries, and the interests of the international community should therefore have priority over the interests of individual States. The economic consequences of exploitation on the development plans of many countries that were dependent on the exploitation and export of raw materials should not be underestimated.

73. The proposal submitted by the Group of 77 was the outcome of an earnest attempt to reconcile all points of view, while still providing for effective control over activities in the area by the Authority and ensuring that the interests of the international community would be paramount. The question of who would exploit the area was extremely important, but it was related to other aspects of the law of the sea, including conditions of exploitation. He appealed to all delegations to accept alternative (B) of draft article 9.

74. He shared the views of the representative of Venezuela who had analysed the dangers of licensing systems. Zaire had also had bad experiences with the system of granting concessions and had had to take very firm measures to prevent one company from becoming a state within the State. His country had abandoned the practice of granting concessions, and was now in control of all major sectors of its economy.

75. Miss MARTIN-SANE (France) proposed that the report of the Chairman of the informal meetings should be reported in full in the summary record of the meeting.

76. Mr. ILLANES (Chile), supported by Mr. FERNANDEZ (Nicaragua), proposed that the statement made by the representative of Colombia, speaking as Chairman of the Group of 77, should be reported in full in the summary record of the meeting.

77. The CHAIRMAN said that, if he heard no objection, the report of the Chairman of the informal meetings and the state-

ment by the representative of Colombia would be reported in full in the summary record of the meeting.

It was so decided.

78. Mr. RAKOTOSIHANAKA (Madagascar), agreeing with previous speakers that article 9 was the crux of the matter being considered by the Committee, expressed support for alternative (B) of draft article 9, submitted by the Group of 77. That text was supported by over 90 States, and although it had been said that alternatives (A) and (B) reflected extremist positions, he felt that alternative (B) was a compromise text which took account of all points of view and was designed to ensure that the international area would benefit mankind as a whole. He hoped that alternative (B) of draft article 9 would be accepted by all members of the Committee, if necessary after further negotiation. Alternative (B) aimed at providing the framework for a new kind of international co-operation to serve the interests of all members of the international community. He felt there were no grounds for apprehension regarding the role of individual States, as the international area belonged to the international community and not to one State. He pledged his delegation's full co-operation in all attempts to reach an acceptable solution.

79. Mr. NOVAKOVIĆ (Yugoslavia), supporting alternative (B) of draft article 9, submitted by the Group of 77, said that the most important principle in the Declaration of Principles was that the Authority should direct and control activities in the international sea-bed area. Even if the Authority concluded service contracts or organized exploitation in some other way, it must retain direct and effective control. He supported the principle that the resources of the area should be exploited directly by the Authority. The second paragraph of alternative (B) provided for exceptions to the rule that the Authority should directly exploit resources; the exceptional nature of that provision was indicated in the phrase, "if it considers it appropriate". With regard to scientific research, the Authority must have adequate powers, for otherwise it would depend on the goodwill of the developed countries for the necessary scientific data. It was not sufficient for the Authority simply to tax the income of entities exploiting the area; it must exercise direct and effective control over all activities in the area to ensure that it received a large part of the profits to be used for the benefit of all countries; that was provided for in alternative (B) of draft article 9.

Organization of work

80. Miss MARTIN-SANE (France), referring to the suggestion made by the representative of Colombia in his statement as Chairman of the Group of 77 that consideration of conditions of exploitation could be concluded by the end of the week, suggested that five full days should be reserved for consideration of that question.

81. Mr. DE SOTO (Peru), supported by Mr. RAKOTOSIHANAKA (Madagascar) and Mr. ILLANES (Chile), said

that, although the Committee was moving on to consider the conditions of exploitation and the economic consequences of exploitation, it had not held an exhaustive debate on the system of exploitation. Alternative (B) of draft article 9 submitted by the Group of 77 relating to the system of exploitation marked a crucial stage in negotiations. He urged members of the Committee to take advantage of the momentum gathered and to proceed immediately with negotiations on article 9. The debate on conditions of exploitation could be held concurrently and should be concluded by the end of the week.

82. The CHAIRMAN, noting that members of the Committee were well aware of the need to negotiate treaty articles, urged representatives to avoid unproductive and time-consuming debates and to proceed with the matters under consideration. The Committee now had its first negotiable text (A/CONF.62/C.1/L.3) before it; article 9 of the draft dealt with the crux of the problem posed by the régime of the international area, and he suggested that it should be dealt with in informal meetings where the momentum had been gathered to bring the matter to an issue.

83. He proposed that, as agreed in informal meetings, the Committee should hold a very brief debate on the economic consequences of exploitation in formal meetings, and should conclude its consideration of that item by the end of the week. He also proposed that the Committee should consider conditions of exploitation in informal meetings and conclude its consideration of that item by the end of the week. Night meetings would be held, if necessary. He hoped that the Committee would be ready to give consideration to the question of the international machinery the following week.

84. Mr. THOMPSON FLORES (Brazil), supported by Mr. WEHRY (Netherlands), urged the Committee to proceed immediately with negotiations on the main issues before it, namely draft articles 1 to 21 and particularly draft article 9, before considering the international machinery.

85. Mr. ROMANOV (Union of Soviet Socialist Republics) said he felt that perhaps too many meetings, both formal and informal, were being held, leaving too little time for real negotiation.

86. After a procedural discussion in which Mr. RATINER (United States of America), Mr. ARCHER (United Kingdom), Mr. AL-IBRAHIM (Kuwait), Mr. THOMPSON FLORES (Brazil), Miss MARTIN-SANE (France) and the CHAIRMAN participated, the CHAIRMAN said that, if he heard no objection, he would take it that his proposed programme of work for the Committee for the next few days was accepted.

It was so decided.

87. The CHAIRMAN said that he would consult with members of the Committee on how best to organize negotiations on article 9 and also on the programme of work of the Committee for the next two weeks. —

The meeting rose at 6.10 p.m.

12th meeting

Wednesday, 7 August 1974, at 10.40 a.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Economic implications of sea-bed mineral development (continued)*

1. Mr. LIND (Sweden) said that the analysis contained in the material that the Committee had before it was complex and was based on data and predictions that could not be accurate in all cases. Although some delegations had questioned certain figures and conclusions in that material, his own delegation did not consider that that could be taken as diminishing the value of the studies and presentations; and it believed that the conclusion could safely be drawn that any future exploitation of the sea-bed might entail at least the risk of having harmful effects on the economies of certain States, especially those of developing countries that were producers of such resources, since the latter could be expected to suffer the most. The Committee must accordingly consider the question of adopting measures to offset those harmful effects. Since the world community would doubtless share the benefits of the area, it should also, in the view of his delegation, take upon itself the responsibility for applying the measures necessary to prevent any harmful effects on developing countries, particularly in the case of countries deriving a major proportion of their export earnings from the minerals that were likely to be produced from nodules. For that reason, his delegation believed that the convention which the Conference was drafting should include provisions on appropriate ways of controlling the exploitation of resources in the area, and regulations designed to prevent, or at least minimize, adverse effects on the exports of developing countries. In that connexion, it should be recalled that Sweden lent its full support to the idea expressed in the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction¹ that particular consideration be given to the interests and needs of the developing countries in sharing the benefits derived from exploitation of the area. It was clearly a complicated task to balance the interests of States which were producers and those which were consumers of minerals that were likely to be derived from future large-scale exploitation of nodules from the deep ocean floor. His delegation did not believe that the new law of the sea should include exact stipulations as to the nature of any regulation of output from the area; the texts of the convention should allow the Authority sufficient flexibility to ensure that its choice between such possible measures could be adapted to the specific conditions of each case. Thus, in line with its basic approach towards the Authority, the Swedish delegation considered that it should be given far-reaching powers which would be the most rational way of managing the area. Furthermore, it was to be hoped that the Authority would maintain close contact with other international organizations having responsibilities for questions related to world trade in primary products, such as the United Nations Conference on Trade and Development (UNCTAD).

2. Mr. BOATEN (Ghana) recalled the directives that had been given to the Secretary-General in General Assembly resolution 2750 A (XXV), in order to draw attention to the nature of that mandate and to indicate the origins from which the form and content of his report had been derived. Those directives drew their inspiration essentially from the Declaration of Principles, which provided that care should be taken to ensure

that the exploitation of the sea-bed beyond the limits of national jurisdiction would not adversely affect the well-being of the developing countries as a whole.

3. The divergence in assessments based on the same fundamental facts was confusing. Moreover, there were so many unknown factors and variables in the data that had been presented to the Committee that the future picture was very difficult to conceive. It was still in the dark about facts such as the potential production of land-based minerals of the kind to be produced in the sea-bed over the next decade, the volume of known land-based minerals still waiting to be exploited, what national plans existed for expanding the production of land-based minerals, and at what rate the land-based resources currently exploited were being exhausted. Complex issues were involved which did not lend themselves to easy and quick study, but the convention that was being elaborated could not await the solution of those complex issues. There was urgent need for a convention to regulate the exploration and exploitation of the sea-bed beyond the limits of national jurisdiction, which had been proclaimed the common heritage of mankind, before a state of anarchy was reached in the area, with consequent potential danger to world peace and stability.

4. Contrary to what had been maintained at the seminar, it was now known that the price of a product did not necessarily depend on its cost of production, of which the costs of the raw materials were only a small part. The fact of the matter was that the sole object of the entrepreneur was to maximize his profit. Further, it was a fact that the price of a particular product could depend on a number of factors, external and internal. As a result the producer of raw materials sold his products cheaply, but, like the producer of products other than raw materials, he bought the finished product at a high price.

5. Faced with the uncertainties associated with the effects of the exploitation of the sea-bed beyond national jurisdiction, on the economies of developing countries which were land-based mineral producers, his delegation thought that the only solution was to create effective machinery with adequate powers to act, in case of need, to avert any adverse consequences, with due consideration for the economies of developing countries which were not exporters of land-based resources. Should no occasion arise to use those wide powers, no harm would have been done; if the opportunity did arise, the precautions would have been useful.

6. Mr. THOMAS (Trinidad and Tobago) said that in the material that the Committee had before it, and in the opinions that had been expressed, there were a number of divergent views regarding substance and projections, the conditions and possible scale of the exploitation, the present technological capacity of the companies and studies on probable exploitation dates and the probable expenditure involved. He identified four main features in the Secretary-General's report: the limited character of the information on which the projections of exploitation and their possible economic consequences were based; the fact that the projections were short-term (to 1985); the difficulty of making an approximately accurate analysis, owing to the fact that available information was not always objective; lastly, the provisional and general nature of its conclusions. An over-all feature of the report was the general uncertainty regarding the periods covered by the projections. He understood the factors responsible for that, and he found the report on the whole satisfactory as it could be extremely

*Resumed from the 10th meeting.

¹General Assembly resolution 2749 (XXV).

useful as a general guide. In deciding the position it would adopt, his delegation had tried to project its thinking beyond 1985; it had always maintained the Conference should plan for posterity and not only for the immediate future.

7. Although his delegation accepted the statement in the report of the Secretary-General and from other sources that manganese nodules were the sea-bed minerals which were most likely to be exploited in the near future, it did not reject other possibilities of commercial exploitation of the sea-bed as technology progressed. As a result of exploration carried out it was known that concentrations of manganese nodules were found mainly in the Pacific and Indian Oceans. It was also known that, from the technological point of view, it was possible to exploit them commercially and that the commercial exploitation of manganese nodules could affect the present prices of their component metals—nickel, copper, cobalt and manganese—now supplied from land-based sources, thereby causing losses which could in some cases be substantial. The projections showed that there might be an appreciable drop in prices, especially in the case of manganese and cobalt. Any such drop would have two immediate effects: a reduction in the export earnings of producing countries, or an irrational depletion of their resources, and a fall in the prices of the metals concerned, which would benefit countries that were consumers of raw materials or finished products made from those metals. The cogency of that argument depended on the theory of supply and demand. Whatever the merits of that theory, it was valid only when the other variables remained constant, i.e., it was a dependent variable. On the other hand his delegation was concerned by the situation of the developing countries; the developing countries that would suffer from increased production totalled 14—i.e., a minority—which meant that the majority of developing countries would benefit. It had been maintained that any attempt to check a fall in prices for the benefit of a few countries would be unjust. The same countries—a minority of industrial countries—that were advancing that argument, had traditionally been profiting at the expense of the majority. It was paradoxical therefore that those very countries were advancing that argument in the “interest” of the majority of developing countries. Whose interests were they really championing? What conclusions could be drawn from that?

8. The Group of 77, composed of developing countries, had arisen from the need to remedy the imbalances and injustices of international trade and the trade practices of which they had always been the victims; the fact that some countries were seeking to speed up their own development at the expense of members of the Group was at a variance with its basic concept and constituted a reversion to the traditional practices of the industrialized countries. The developing countries were striving for industrial development, but not on the basis of the exploitation of the Group's members or at their expense. No group, even if it constituted a majority, should seek to benefit unduly at the expense of others from the resources to be derived from the international sea-bed area.

9. A rational system of exploitation was required aimed at reducing price fluctuations to a minimum, stabilizing the economies of those few developing countries and at the same time increasing the potential of the area for the benefit of all mankind, especially the developing countries, in order to accelerate their industrial and economic development. A system in which it was the multinational companies that had the power to exploit, and production was left to the free play of market forces was not the answer, for it would continue to enrich the few at the expense of the majority. For the developing countries, the resources of the international sea-bed area might provide the last opportunity for collective exploitation; they must not let that opportunity slip. There was only one way to make use of those resources for the benefit of the majority: by managing, developing and supervising all aspects of their exploitation so as to ensure equal benefits for all the developing countries and

not only for the few; if they lost that opportunity, only a minority would benefit.

10. The report of the Secretary-General suggested compensatory and preventive measures, which were not mutually exclusive but complementary, to remedy the present situation in which the immediate interests of a few developing countries appeared to conflict with those of the majority. The proposed solutions would protect the economies of the producing developing countries and provide an orderly system of development of the resources of the area in the interest of the whole international community.

11. The Conference should seek to evolve a system which constituted a just and proper balance that would protect first the few developing countries whose economies were largely dependent on metals that could be mined from the sea-bed and secondly, accelerate the economic and industrial development of all developing countries on the basis of the equitable use of the resources of the international sea-bed area. That approach was complex and difficult but the difficulties were not necessarily insuperable. What was needed was collective effort, political will and a global enterprise beyond the capacity of any existing organization or company, a strong and broadly based organization representing the interests of all in which justice and equity could be achieved.

12. Mr. TURQUET DE BEAUREGARD (France) said that although France was one of the principal producers of nickel and possessed considerable mineral reserves in New Caledonia it supported the exploitation of sea-bed nodules, since it was aware that terrestrial reserves were limited and their exploitation was becoming increasingly difficult; in fact, it was necessary to assume that the whole of mankind needed mineral raw materials and that it was impossible to do without the resources of the sea-bed, the exploitation of which would benefit all countries of the world.

13. The system to be devised for the exploitation of the sea-bed must ensure that such activities were carried out with maximum efficiency. Since the commencement of exploitation would engender price fluctuations, the most suitable method would be a progressive exploitation of the sea-bed; in any case, the stabilization of the prices of raw materials must be a matter of constant concern to the international community. France, for its part, had proposed in the United Nations General Assembly that the problem should be studied on a broad front and that, initially, price changes should be kept under some kind of supervision in order to avoid harming either the mineral producing countries or the consumer countries.

14. The current Conference should avoid establishing a system that protected countries possessing mineral resources in raw form, to the detriment of the group of countries whose economic life was dependent upon access to raw materials, which should be used for the benefit of the whole of mankind.

15. Mr. DE SOTO (Peru) said that the Secretary-General's report on sea-bed mineral development was divided into three chapters: the first, a review of sea-bed mining activities, was a study that had proved to be difficult, since the few enterprises that were in a position to undertake exploitation did not supply the necessary information; the second chapter, concerning the probable impact of nodule mining, was of a speculative nature, precisely because of the difficulty of obtaining information. On the other hand, it should be pointed out that, while it appeared possible to forecast that only manganese nodules were likely to be exploited in the foreseeable future not all sea-bed mining possibilities were yet known with certainty.

16. The third chapter of the report dealt with the basic problem, namely the promoting of the rational development of nodule resources. In that connexion, he recalled that his country had been one of the sponsors of General Assembly resolution 2750 A (XXV), which established the objective of identifying the problems arising from the production of certain

minerals and examining the impact they would have on the economic well-being of the developing countries, in particular on prices of mineral exports on the world market.

17. In that respect, there was no need for the convention to provide for the protection of the mineral consumer countries, since they could only benefit from the exploitation of the seabed. The problem would seem to lie in the fact that exploitation designed to favour the developing countries would have unfavourable repercussions on certain developed countries.

18. Referring to the discussions held on the subject, he said he disagreed with the view that sea-bed mineral exploitation would affect only a small minority of countries and would not adversely affect the developing countries that produced minerals. It should be borne in mind that the studies referred only to manganese nodules and took no account of the other possibilities for exploitation. Furthermore, it was not a question of legislating for a few years but of formulating a lasting convention and, while it was in force, the technology of manganese nodule exploitation might develop in such a way as to be cheaper than land-based exploitation.

19. His delegation was not convinced by those arguments which maintained that adverse effects would result from providing the Authority with effective means of combating the possible adverse effects of sea-bed mineral exploitation; in that respect, he felt that powerful machinery was needed to solve the problems that might be faced by the developing countries that produced minerals.

20. His delegation supported the inclusion in the convention of a provision that would enable the Authority to take whatever measures were required, including the control, reduction or suspension of production, or the fixing of prices for products obtained by sea-bed exploitation, whenever it considered that such exploitation might adversely affect the developing countries.

21. Mr. ZEGERS (Chile) said that the Committee had to determine the economic consequences of the extraction of minerals from the sea-bed. In 1968, when the sea-bed Committee had first met it had already been evident that the extraction of minerals from the sea-bed would probably have adverse effects on countries producing land-based minerals. The Committee had decided that one of the regulatory principles of the exploitation of the sea-bed should be that those effects should be foreseen and minimized.² That principle was contained in the Declaration of Principles and UNCTAD had also recognized it in resolution 51 (III).³ The Secretary-General had prepared a report on the question in response to the request made in General Assembly resolution 2750 (XXV).⁴

22. Consequently, since the extraction of minerals from the sea-bed could have adverse economic effects the Committee must determine their nature and scope. The discussion had concentrated on the exploitation of manganese nodules, because that might almost be considered to have started, despite the moratorium laid down in General Assembly resolution 2574 D (XXIV). However, manganese nodules were not the only mineral deposits which could be exploited. The possible extraction of hydrocarbons from the ocean basin must also be considered, as well as the exploitation of metal-bearing sludge and of the many mineral deposits in the sea-bed, which could produce fantastic yields. Consequently, practically all mineral-producing developing countries could suffer adverse effects from the exploitation of the mineral resources of the sea-bed.

23. According to the Secretary-General's report, the exploitation of manganese nodules would be prejudicial to several

countries which were producers of the minerals that could be extracted from those nodules, namely copper, nickel, cobalt and manganese, but would affect some more seriously than others. Apparently over 30 countries would be more or less seriously affected.

24. In that connexion, it should be remembered that potential resources of the nodules seemed to be enough to supply the needs of all mankind, without any exploitation of land-based sources. Moreover, firms from industrialized countries had been exploring the nodules and already possessed highly-developed extraction methods, let alone future possibilities offered by the fantastic progress of technology. One great Power also had a project which, if carried out, would enable it to grant exploitation licences outside any control by the international community.

25. In order to determine the nature and scope of the economic effects of the exploitation of manganese nodules, the Committee could base its work on the UNCTAD study and that of the Secretary-General, which were condensed in document A/CONF.62/C.1/L.2. According to the UNCTAD secretariat, the extraction of minerals from manganese nodules would adversely affect the world market prices of copper, cobalt and nickel, all the main producers of which were developing countries. The Secretary-General said that prejudice would be caused in the short term to producers of cobalt and nickel and in the long term to producers of copper.

26. UNCTAD estimated that by 1980, the losses suffered by the countries producing those metals could equal the total income of the Authority, i.e. that its cost would be borne completely by the developing countries. The Secretary-General's report did not contain specific figures, but its conclusions were the same as those of the UNCTAD report.

27. Two ways of dealing with that situation had been proposed, one of a compensatory and the other of a preventive nature. The former had been rejected because it had been considered impracticable, since the Authority's income would not cover the compensation. Four types of preventive measures had been proposed: the first was that the Authority should control production, but both UNCTAD and the Secretary-General had shown the advisability of adopting a flexible attitude in that respect, in view of the constantly changing situation. A second proposal was based on general commodity agreements; that was an interesting proposal, but long-term in nature. Another method would be to fix minimum prices and lastly, there was the complementary criterion consisting in regulating production in accordance with increasing demand for the minerals affected, especially nickel. Whatever method was adopted, and it might be possible to adopt a combination of all four, the exploitation must obviously be regulated, in order to safeguard regions which the developing countries would be able to exploit later on when they had access to more advanced technology. All the relevant studies agreed that no incentives should be offered for the exploitation of the sea-bed deposits.

28. In his summing-up of the situation made to an unofficial meeting of the Committee on 1 August, the Chairman had said that it was necessary first to determine the extent of the possible adverse effects and then to decide what measures the international community should adopt, bearing in mind the need to avoid paralysing production. He had added that the Authority should be given adequate powers to that end, and should possess a technical body which would keep the matter under constant review. The Chilean delegation requested that the Chairman's summing-up be reproduced in a summary record.

29. It was very important that the Committee should prepare draft articles on that subject.

Mr. Iguchi (Japan), Vice-Chairman, took the Chair.

30. Mr. FINCHAM (South Africa) said that one of the features of the Conference had been its educational effect, as had

²Official Records of the General Assembly, Twenty-third Session, document A/7230.

³See *Proceedings of the United Nations Conference on Trade and Development, Third Session*, vol. I: (United Nations Publication, Sales No. E.73.II.D.4), annex I.

⁴Document A/AC.138/36, 28 May 1971.

already been observed in the Committee, and one of the issues in which the educational process had played a significant part was that currently under discussion. One aspect that had struck his delegation was that all the projections and forecasts concerning the possible effects of sea-bed mining were short-term and based on a fairly large number of assumptions, as had been repeatedly stressed by the experts. As the representative of Peru had remarked, the Conference must not think in terms of 1975, 1990 or the end of the century, but of the long term. If success were achieved in preparing a convention, its writ would run for generations to come, when the existing political and economic picture would have become very different. His delegation had reached the conclusion that the Conference did not have sufficient information at its disposal on the subject for it to know what was going to happen over the long term, and it could expect to see no more than a small part of the picture. The Authority to be established must have the powers to tackle not only the problems that could be currently foreseen, but also those problems which could arise one or two generations later; and it must also have the necessary flexibility to solve them. There were grounds for assuming that sea-bed mining activities would have deleterious effects on the economies of producers of some land-based metals, and the Authority must be enabled to react flexibly and effectively to the threats as and when they arose, through commodity agreements, price-fixing, stock-piling or the use of compensatory devices—in other words, all the techniques which the economists knew or might conceive. The fundamental objective was to find a means of combining the extensive powers which the Authority would need under a constitution that would ensure that it remained dedicated to the real long-term objectives for which it had been created. In other words, the Conference must devise the means of ensuring that the Authority would be strong enough and that it would, at the same time, be obliged to concentrate on its work, while resisting the temptation to allow a possible majority to change its basic aims and induce it to intervene in political affairs, which it had not been established to handle. That was the dilemma to which his delegation wished to draw attention.

Mr. Engo (United Republic of Cameroon) resumed the Chair.

31. Mrs. MANN BORGESE (International Ocean Institute), speaking at the invitation of the Chairman, said that as a result of current trends in delimiting national jurisdiction it might be anticipated that a substantial part of the manganese nodules of the abyss would either pass under national jurisdiction or could be claimed by coastal States. Consequently, prospective exploiters of manganese nodules could, in many cases, have the choice of exploitation either in the international sea-bed area or in areas under national jurisdiction. Thus, if a licensing or service contract system of exploitation was adopted, the proposed International Sea-Bed Authority would not be able freely to determine royalty provisions nor would it be able to adopt effective arrangements to ensure that mineral output from the sea-bed would not result in prices that were inequitable to land-based producers.

32. In the view of the International Ocean Institute, the only realistic instrument for putting into practice the concept of the common heritage of mankind was the enterprise system. In existing conditions, however, it seemed unlikely that the enterprise could raise the necessary capital and obtain the necessary technological capacity to compete successfully with industrial consortia exploiting manganese nodules within the areas under national jurisdiction.

33. In those circumstances, her organization considered that, in the light of technological advances, the most appropriate solution would be the establishment of an international ocean space Authority—a system which would fulfil functions beneficial to all States.

34. Mr. ROMANOV (Union of Soviet Socialist Republics) said that the statement which had been read out by the representative of the International Ocean Institute and distributed to members of the Committee was full of references to matters which had nothing to do with the item under discussion. Moreover, it included a proposal, which was completely out of order and contrary to the provisions in the rules of procedure concerning statements by non-governmental organizations. He therefore requested that the references by that representative to matters not relevant to the subject under discussion should be omitted from the record, that her proposal should be rejected and that henceforth all statements by representatives of non-governmental organizations should be submitted in advance to the Chairman, who would decide whether it was in order for them to be read out.

35. The CHAIRMAN said that he had invited the representative of the International Ocean Institute to speak in accordance with rule 65 of the rules of procedure. However, the statement by that representative had not been in conformity with paragraph 3 of that rule and consequently the parts of that statement which were not connected with the item under discussion would be omitted from the record. Moreover, no consideration would be given to the proposal in the text of the statement which had been distributed.

36. Mr. LOOMES (Australia) expressed his appreciation of the Secretary-General's report on the economic implications of sea-bed mineral development in the international area. Despite the difficult problems inherent in making statistical and economic forecasts when important data were not available, the Secretary-General's report was to be commended.

37. The real issue at hand was to determine what measures were necessary when adverse implications occurred. In that connexion, the Secretary-General's comment, appearing in document A/CONF.62/25, about the flexibility necessary for the régime to adapt itself to the changing economic order was particularly appropriate. Part of the task of the Conference was therefore to create as an element in the machinery to be established, an organ which would be responsible for the surveillance of economic implications arising from sea-bed production and for recommending to the Authority measures appropriate to deal with those implications. Time would be better spent on setting out the broad guidelines of the powers and functions of the proposed organ rather than specifying measures to deal with problems which might arise, since that would inhibit the objectivity of the organ in question. He therefore wished to make some comments on the establishment of what could be called a commission, whose powers and functions should be set out in the convention. The commission would be composed of experts and should represent the interests of producers including land-based producers and consumers of resources exploited from the sea-bed. It should have powers to recommend to the Council measures appropriate to deal with any adverse implications which might occur as a result of sea-bed exploitation. Its terms of reference might be as follows: "The commission should maintain continuous surveillance of local market conditions relating to the materials of the sea-bed area and should recommend appropriate measures consistent with the interests and needs of producers and consumers".

The meeting rose at 1.20 p.m.

13th meeting

Thursday, 8 August 1974, 10.15 a.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Economic implications of sea-bed mineral development (*continued*)

1. Mr. OGISO (Japan) said that the question of economic implications was important not simply because the powers and functions of the International Authority would be determined in the light of the conclusions drawn by the Conference but because the future economic welfare of the international community depended on it. The international community must make its decisions on the basis of an understanding of the consequences those decisions might entail. In his delegation's view the question had not received the attention it merited in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, and he thought that the recent seminar had marked a major step forward.
2. It had emerged in the seminar that there was clear recognition that the possible economic effects described in the report of the Secretary-General (A/CONF.62/25) and those of the United Nations Conference on Trade and Development (see A/CONF.62/C.1/L.2) were merely forecasts based on uncertain assumptions. His delegation shared the view that forecasting the economic effects of sea-bed production was particularly difficult because the nodule industry was not yet an on-going industry and because vital information in its possession had not been made generally available. Experts had pointed out that a nodule mining operation might not be as profitable as claimed by the representatives of industry, who had other motives for presenting sea-bed mining as a profitable proposition from the outset. His delegation agreed with that view and believed that a re-appraisal should be made of the schedule for new nodule operations.
3. Particular attention had been paid to preventive and compensatory measures and, to a lesser degree, commodity arrangements, as means of preventing the adverse effects of sea-bed production. His delegation agreed with the view that such measures involved practical difficulties of application and would have a tendency to increase the prices of the principal metals found in manganese nodules, to the detriment of all consumer countries.
4. The most important feature of the seminar had been the growing awareness of the importance of sea-bed production for the consumer countries as a whole; the question of economic implications was now being seen not only from the viewpoint of land-based producer countries but also from that of consumer countries, especially the developing countries which did not even have land-based resources to be affected by sea-bed production. That significant development might be the crux of the whole question.
5. There had recently been a disruption of the world commodities situation; the effects of the ensuing confusion had spread through the world to the detriment of all countries. His delegation did not agree that only the developed States would be affected either favourably or adversely by a change in the resources situation. The developing country consumers which lacked resources would be the main victims. Accordingly, the maintenance of stability in the commodity markets benefited all countries but in particular the developing country consumers. As one of the largest consumers of metals and importers of ores, his country was very sensitive with regard to the supply and demand of minerals. It was concerned about the capacity of land-based mines to meet the increasing demands for such metals as nickel and copper so as to keep their prices stable. Its pessimism was based in particular on the recent behaviour of various commodity markets which were feeling the impact of the expanding world economy and rapidly growing population. Commodity markets were increasingly governed by non-economic factors such as producer cartels. Some experts believed that the prices of some metals would rise even with increased sea-bed production. Sea-bed production could help to remedy the situation by providing alternative sources of supply of minerals now concentrated in the hands of a small number of countries. Accordingly, the régime for sea-bed exploitation should provide for the protection and promotion of such production in order to ensure investments from private sources.
6. His delegation understood the concern of developing producer countries at the prospect of losing earnings as a result of price reductions due to sea-bed production, but it thought that such reductions would not occur in the foreseeable future. It supported any reasonable measures designed to alleviate the difficulties of developing country exporters. However, in determining the policy for the exploitation of sea-bed minerals, the Conference was required to take into consideration many, sometimes conflicting, objectives. The important thing was to harmonize those objectives so that the exploitation of sea-bed resources could be translated into real benefits for the international community. To achieve that aim his delegation was prepared to support comprehensive long-term production planning designed to stabilize the prices of important minerals found in manganese nodules.
7. Mr. RATINER (United States of America) recalled that the head of his delegation had stated in the Committee that means should be sought to accommodate the concerns of land-based producers in the developing countries if it became clear that the sea-bed production would harm their levels of production, but that consumers must also be protected from artificial price increases.
8. It had emerged from the Committee's discussions that it was impossible to verify that sea-bed production would clearly reduce the output or income of the producers of nickel, copper, cobalt and manganese in the developing countries from their present levels.
9. The working paper submitted by his delegation to the Committee's informal seminar, and now submitted for the record (A/CONF.62/C.1/L.5), contained an estimate of the effects of sea-bed production on land-based producers slightly different from the one in the most recent report of the Secretary-General on that subject which in its turn differed somewhat from the conclusions in the studies prepared by the UNCTAD secretariat. Several delegations had expressed the view that analysis of statistical variations and the basic assumptions in those reports was better left to economists and technicians. However, the uncertainty surrounding economic estimates had to be taken into account in developing treaty texts to solve the questions of how to protect both producers and consumers in the developing countries.
10. His delegation seriously doubted whether sea-bed production would result in any decline from present levels of production or in the total revenues of land-based producers within the forecast period of the Secretary-General's report. Other

delegations thought that the possibility of such a decline was greater, and had presented suggestions for the solution of the problem as they saw it. Although there was widespread sympathy for the perspective inspiring those proposals, there was also general recognition of the difficulties in their implementation and the uncertainty of their effects on the range of economic interests in the negotiation. Implementation of any of those schemes would require comprehensive data concerning market factors, whose accuracy could never be verified with absolute precision. The Authority would need to predict the behaviour of four global markets whose current combined value totalled thousands of millions of dollars. It would need to contend with production variables in numerous producer countries and demand factors in over 150 nations. The margin of error in such data would obviously be substantial, to say nothing of the problem of extrapolating economic trends in the future. For example, one of the most commonly discussed means of regulating sea-bed production would be to limit the sea-bed area open for exploitation in any given year. At the time such a decision was made, the Authority would be basing its recommendation on projections concerning future markets three to ten years in advance, since approximately that period was needed to bring a deep-sea mining unit into full-scale operation. It would have to project production not only from present producers but from potential new land-based producers. Given the difficulties regarding market projections, his delegation questioned whether even the most capable of experts could guarantee a satisfactory data base for decisions of that nature.

11. Implementation of those schemes would also require the ability to take measures influencing global markets. Most of the proposals had been limited to controls over sea-bed production, but that production would account for only a small segment of the world's total for most of the metals in the foreseeable future. Thus, as the United States working paper explained, limiting the level of mineral recovery from the sea-bed might not appreciably affect global markets. Moreover, production restrictions on sea-bed output would not provide the Authority with an effective tool for selectively protecting individual metal markets because of the joint product nature of sea-bed operations.

12. Finally, even if it were possible to implement some of those proposals, there would still be no acceptable means of protecting only producers in the developing countries. Producers from the developed countries accounted for a large share of total world output for the metals in question. Moreover, implementation of any of the schemes could result in economic costs to consumers of all countries, both developed and developing, far in excess of the benefits to land-based producers.

13. A solution to the problem of developing country producers must be found, but it must maintain a considered balance among all economic interests, particularly those of the consuming countries in order to maximize the benefits of sea-bed exploitation for all mankind. Given the inadequacy of the information available, it was clearly impossible to take a decision on what should be the exact nature of that balance. His delegation was convinced that no other delegation would wish to agree to treaty articles purporting to determine in advance a solution to a problem whose parameters were speculative. The Committee must seek an accommodation providing a mechanism for reviewing on a continual basis whether the problem did in fact exist, what its true dimensions were, and what measures could most appropriately be taken to solve it in the light of conditions existing at the time.

14. Mr. KALONDJI TSHIKALA (Zaire), speaking on behalf of the countries of the African group, said that they were not opposed to the development of technology or to new ways of increasing the resources available to mankind. Their concern was to see that the general wealth was shared fairly among all

nations; they would support the search for new riches only if they were fairly distributed.

15. The African continent, where most of the least developed countries were situated, would feel the harmful effects of sea-bed exploitation most severely. Africa was the world's largest producer of raw materials, and its attempts to industrialize depended on their exploitation. If the technology of the extraction of minerals from the sea-bed brought about low production costs, the economies of the African countries would immediately be adversely affected. The reports of the Secretary-General and of UNCTAD demonstrated not only that it would soon be possible to exploit the resources of the sea-bed but that the producers of land-based minerals would suffer. He did not wish to go into the question of when the exploitation of nodules would begin; the point was that the effects of such exploitation were potentially harmful for the developing countries—a point brought out clearly at the seminar.

16. The African countries could not accept the argument that only a few developing countries would be affected while the majority benefited: that was a biased view put forward as a palliative for the developing countries. It must be remembered that all developing countries were potential producers of raw materials; they must not be stripped of the hope of industrializing and raising their standard of living.

17. The developed countries were willing to make large investments in the extraction of minerals from the sea-bed because they would clearly benefit therefrom. The reports had shown that the oceans were a huge reservoir of resources and that the conditions for profitable exploitation already existed. Such exploitation would obviously compete with the more costly land-based production, with harmful effects on the latter's profitability. Corrective measures must be found to mitigate such effects and prevent any widening of the gap between developed and developing countries. Of the two principal methods proposed, the African countries preferred preventive measures; compensatory measures were impractical, provided insufficient guarantees and would be subject to bureaucratic delays. There would never be proper compensation for the developing countries affected. Compensation should therefore be used only as a supplementary measure. Strict control of production and positive action by the International Authority with regard to prices could alone ensure that the exploitation of maritime resources did not prove fatal for developing country producers. The system of base prices must be treated with caution because it might prove unjust. There should be a specific clause in the convention empowering the International Authority to control all economic activities, especially the production of minerals, and to impose proper price controls, taking into account the interests of developing country producers and the current state of the development of technology. The principle of complementarity of the exploitation of land-based and sea-bed resources must also be clearly established. There was no need to rush to exploit the sea-bed while land-based resources were still sufficient. Uncontrolled exploitation would lead to over-consumption and the exhaustion of the resources, to the detriment of future generations.

18. The analysis he had given was based on a simple principle: the resources of the sea-bed were the common heritage of mankind and should be managed for the benefit of mankind as a whole, special account being taken of the interests of the developing countries. The exploitation of the resources must be wisely managed: anarchy would not benefit consumers, but rational exploitation would benefit all mankind. The international community must defend the right of every country to survival. The African countries advocated an instrument covering the whole international zone, which should not establish the right of the strongest or of the first comers but ensure that the general interest prevailed.

19. Sir Roger JACKLING (United Kingdom) noted that economic implications formed the backdrop for the debates at

Caracas, as they had done for the six years of discussion in the sea-bed Committee. During the second of the seminars arranged during the previous week many delegations had expressed the fear that there would be adverse economic implications from sea-bed exploitation not only for developing country producers but for developing countries as a whole. His delegation did not believe that that argument had been proved; on the contrary, it believed that despite the uncertainties of forecasting, the economic implications would be favourable for as far into the future as predictions could usefully be made. Only in the most exceptional circumstances would it be possible for even Zaire, which dominated the supply of cobalt, to be affected adversely. However, his Government was prepared to consider action to safeguard countries against any possible adverse effects, however remote. For example, commodity agreements might be considered, provided that they were not restricted to the resources of the sea-bed alone. His delegation did not agree with the view that it would be appropriate for the International Authority to assume responsibility for such arrangements. They would be much better handled in a forum with less restricted functional and geographical limits. An attempt to create suitable arrangements within the limited context of marine resources would face immense practical difficulties.

20. The main problem now facing mankind in the context of the item under discussion was to meet the increasing demand for minerals. That challenge had been met successfully by geologists, mining engineers and mineral technologists since man had first used minerals. What had once been regarded as hopelessly low-graded deposits of certain metals were now, thanks to new technology, an essential source of supplies. Far from having adverse economic implications for mankind as a whole, or even for the main producers, the results had been wholly beneficial to consumers and producers alike.

21. His country regarded the development of deep-sea resources as an analogous breakthrough which was likely to have similarly beneficial effects. To achieve equitable distribution of such benefits, the highly industrialized countries must contribute the technical and financial capabilities needed for the development of the resources. In exchange the enterprises concerned must receive an equitable return on their investment. His delegation was sure that if those principles were accepted, the Committee would be able to embody them in legal drafts. However, before negotiations could begin there must be an understanding of all the interrelated issues involved. It was impossible, for example, to negotiate about a régime without knowing what the applicable conditions might be. For that reason alone his delegation had misgivings about the kind of programme that had been outlined at the previous meeting. It hoped that the informal meetings now being held would be the occasion for a frank exchange of ideas on the conditions of exploration and exploitation.

22. Mr. BASABE (Argentina) said that there were two aspects to exploitation of the resources of the international zone. On the one hand, such exploitation involved the possibility of obtaining minerals from new sources located in the sea-bed beyond the limits of national jurisdiction. That could be analysed in objective economic terms, particularly with regard to whether its cost was competitive with that of land-based mineral products. On the other hand, one had to consider the effect which obtaining minerals from that new source could have on present world production, both from emerged territory and from continental shelves.

23. With regard to the first aspect, it was necessary to prospect and explore the international zone systematically in order to determine the extent of reserves and the quantity and quality of the minerals. It was also necessary to find the most appropriate systems for extraction, which would involve taking into account, *inter alia*, depth, meteorological and marine conditions and the position of the minerals. An optimum system of

transportation had to be found. It should also be taken into account that the metallurgical process, if not yet worked out, would be worked out in the near future, since technological obstacles could be quickly overcome through the refining or combining of known methods or the use of new ones. However, environmental effects would also have to be taken into account so that operations could be developed with a view to preserving the environment and remaining resources. It was also necessary to exploit rationally, since the exact extent of reserves was not known; otherwise, the only criterion would be market conditions.

24. With regard to the effect of exploitation of the international zone on land-based production, it was safe to say that many countries had not yet completely explored most of their emerged territory and that there were good reasons for expecting new deposits to be discovered which could be exploited under existing technological and economic conditions. Moreover, in view of increasing demand, it was improbable that land-based production would cause a reduction in market prices. On the other hand, there was every indication, as the reports of UNCTAD and of the Secretary-General showed, that metals obtained from sea-bed nodules would cost much less than those obtained on land.

25. The knowledge gained so far indicated that sea-bed resources would provide mankind with minerals for a long time to come and that any concern that they would be exhausted or depleted was unwarranted, particularly if it was taken into account that, unlike land-based resources, sea-bed minerals were to a certain extent renewable.

26. The difference between the mining of new land deposits and the mining of marine deposits was that while in the case of the former production in large quantities and at a lower cost was an uncertain possibility, in the case of sea-bed mining such production was a strong probability and could be started in the near future.

27. Thus, sea-bed mining was truly viable and could be expected to develop and to influence the world market. Increased production of minerals, probably at lower cost, would be a positive development for mankind, since it would provide a greater supply. However, if it caused a lowering of prices or a decline in production in land mining, it could become a negative development for part of mankind, namely the developing countries which exported the same products as were found in the sea-bed.

28. It must be realized that those possible harmful consequences would not be limited to marketing aspects, such as a lowering in prices or difficulty in disposing of production, but also might involve such direct consequences as cessation of mining in areas which were or might later become marginal, with resulting unemployment and loss of essential income for those developing countries.

29. Argentina's domestic production of metalliferous minerals was grossly inadequate, and importation of those minerals, of metals and of chemical by-products had risen to an average of \$US 400 million per year. To compensate for that situation, Argentina had planned a mining development project designed to achieve self-sufficiency and the establishment of processing industries. In other words, his country would not be adversely affected by increased production of minerals or by a possible lowering in prices. On the contrary, its economy could be benefited by a lowering or stabilization of the prices of raw materials for export.

30. However, his country still advocated an international policy based on justice and support for the developing countries. Argentina was convinced that effective methods should be applied which would minimize the adverse effects of exploitation and compensate for their consequences, and it was prepared to support such measures as part of a package deal adopted by the Conference, taking into account the interests of

both exporters and importers of metals. Some members of the international community could not be allowed to benefit at the expense of others, since that would mean the perpetuation of a system which must be done away with once and for all. Hence it was necessary to decide immediately to establish a strong and flexible organ empowered to regulate the entire process, so that any deviation from its balanced development could be prevented.

31. Mr. D'STEFANO PISSANI (Cuba) said that although some representatives would have one believe otherwise, the interests of the countries which produced commercially exploitable land-based resources of the same kind as those to be found in the sea-bed and subsoil, i.e. the developing countries, were, as always, opposed to the interests of the consumer countries which would benefit from exploitation of the sea-bed, i.e. the developed capitalist countries. Studies by international bodies confirmed that even if fees were paid by concessionaires to an International Authority, it would be the developed countries which would benefit commercially from the extraction of such resources and that by 1980 the income of the developing countries would be \$160 million lower than what it would be if the sea-bed were not exploited. Even that \$160 million figure was modest compared with the detriment that developing countries would suffer in other ways if measures were not taken to avoid such harmful effects.

32. The imperialist countries were maintaining that exploitation of sea-bed resources would in the long run have adverse effects on only about a dozen developing countries. That strategy was designed to divide and rule, i.e. to divide the developing countries, or the Group of 77, which were united in their interests. Not a dozen but a hundred countries would be affected. The eloquent statement of the spokesman for the African countries had very effectively answered the imperialist countries' arguments.

33. Despite what the representative of Argentina had said, many countries were active in exploiting sea-bed resources. The benefits derived from those resources should be used for the benefit of mankind as a whole, especially of the developing countries, and that required the establishment of an appropriate International Authority.

34. The representative of Ghana had correctly analysed on the previous day the position of those who argued that when mineral prices fell, so did the prices of finished products. In fact, as studies at both the national and international levels had shown, there was an increasing disproportion between prices of raw materials and finished products. The developed countries were to blame for the inflation which affected the developing countries, and that phenomenon, which had occurred with regard to land-based resources, could also occur with sea-bed resources if steps were not taken to prevent it.

35. While at an earlier stage the capitalist monopolies had merely taken advantage of the lowest prices they could find, today's multinational enterprises, representing the culmination of a lengthy centralization process, now set prices. They must not be allowed to use sea-bed resources to strengthen that price-setting position.

36. Sea-bed resources had to be viewed in the light of three factors: their consequences for international trade; the benefits they would bring to consumers, especially in the developed countries; and their adverse effects on producer countries, which were mainly developing countries.

37. It was significant that, at a meeting the previous week, there had been no adequate response to his delegation's questions concerning the tendency of some countries to produce substitutes for the products of developing countries. In particular, no explanation had been given as to the economic impact of that phenomenon on land-based resources, and perhaps later on sea-bed resources, or as to why the phenomenon occurred and how its consequences could be prevented.

38. Another phenomenon, to which the representative of Trinidad and Tobago had referred, was the disproportion between the talent available to developed and developing countries. That was the result not only of structures of dependency but also of the "brain drain", which was in fact the theft of brains. Experts, trained by the developing countries at considerable cost, were then stolen by other countries for their own benefit. In the case of the Latin American countries, the cost of training such experts was much greater than the aid those countries received from the Power which stole them.

39. A strategy had to be adopted to put an end to price-setting and to avoid the harmful consequences of the exploitation of sea-bed resources. Even such measures would not be enough, however, unless the principle of the common heritage of mankind was given its full meaning. The same Powers which had pillaged the land were now ready to pillage the sea-bed, and the Committee, while it should not confine itself merely to regulatory matters, should prevent damage which would later be difficult to undo.

40. Mr. HARAN (Israel) said that the current debate involved not only the implications of deep-sea mining but those of the establishment of an international régime for the sea-bed beyond national jurisdiction.

41. The availability of additional resources from sea-bed exploitation was a positive development which should be welcomed by all who were interested in the material progress of mankind. However, as the General Assembly had indicated, there had to be an equitable sharing by all States in the benefits to be derived from those resources. In that regard, there were two relevant criteria: the state of development of the recipient country, and the advantages it would obtain from the establishment of the new régime.

42. The sea-bed was not *res nullius* but *res communis*. That referred not only to the international area. Any extension of marine resources jurisdiction providing additional revenues should therefore lead to some form of sharing of those revenues with the international community. Any articles adopted by the Conference on operations of the International Authority should contain provisions for receipt by that Authority of such revenues.

43. It also had to be remembered that sea-bed exploitation might produce hardships to developing countries which produced the same minerals that would be mined in the international zone. Opinions were divided on the severity of those hardships, but whatever their extent, their negative effects must be avoided at all costs. The Authority must therefore have special regard to the problem of the developing countries, and a draft article, along the lines of the Jamaican proposal, should certainly be included in the future convention. Machinery should also be established to monitor economic development and to decide whether any countervailing action was called for. In particular, the Authority would have to decide on the "mix" of actions to be taken.

44. In that regard, there were two types of actions, preventive and compensatory. Preventive action included price-fixing and restrictions on output. The latter meant that the sea-bed area would become a marginal producer of minerals, producing them if and when world market conditions permitted. His delegation could not agree to that approach, which was contrary to the "common heritage" approach that provided for a sharing of resources.

45. Another type of preventive action was commodity agreements which, historically speaking, had sometimes worked and sometimes not. His delegation was prepared to leave that matter to the Authority, allowing it the right to participate in such agreements at its discretion. It might also be appropriate to include in the convention certain guiding principles as to how the Authority should act; those principles should be in keeping with the standards developed by UNCTAD, such as

the principle of stable, equitable and remunerative prices and that of maximization of benefits to developing countries as a whole.

46. Compensatory measures should not be excluded from the principles of action, since they were selective and therefore perhaps most effective. They should be financed from revenues derived from mining activities conducted both within and outside the international zone.

47. Mr. BENNOUNA (Morocco) said that the Secretary-General's report on the economic implications of sea-bed mineral development in the international area mentioned that Morocco was one of the countries which would suffer from exploitation of the sea-bed mineral development in the international area, in particular with respect to cobalt and manganese.

48. The report made it clear that cobalt was an expensive metal with a relatively limited market. Between 1970 and 1972, 76 per cent of cobalt output, or 23,000 tons, came from the developing countries. Projected world demand for 1985 was 60,000 tons as against nodule production of 30,000 tons. Those figures showed that traditional producers would keep only half the world market, with probable adverse consequences on their income.

49. In quoting those facts he did not wish to draw any conservative conclusions, for the commodity needs of the international community would grow. His delegation would like to collaborate in working out a method that would reconcile the legitimate interests of the consuming and the producing countries, although the latter ought to have a certain priority in view of the terms of paragraph 6 of the Declaration of Principles appearing in General Assembly resolution 2749 (XXV). An imaginative formula must be devised in order to avoid disastrous consequences to the producing countries. An answer had to be found to the question of what regulations were to be imposed on future exploitation in the area, and what the competences and powers of the future International Authority were to be. The institutional and regulatory aspects were thus closely linked.

50. In the report of the UNCTAD secretariat, a number of methods were put forward. His delegation endorsed the view of the Zaire representative that a preventive method was needed. The future convention should provide for a committee in charge of planning and stabilizing prices, with the following powers: first, to plan nodule exploitation in accordance with forecasts of land-based production; secondly, to distribute quotas among the companies with which the International Authority had service contracts; thirdly, to establish buffer stocks where necessary; fourthly, to modify unilaterally service contracts, with respect to the initial financial and economic equilibrium and under the supervision of a tribunal.

51. Some delegations had proffered reassuring statements that world demand was such that the economic consequences on the earnings of the developing countries would be minimal. However, the lawyer's task was to take precautions for the future.

52. Mr. FRANGOULIS (Greece) said that despite the documents produced by the United Nations and UNCTAD secretariats, and the illuminating discussions at the seminar, his delegation did not think it possible to judge with certainty what effects on the economy of the developing countries exploitation of the sea-bed area would have. Statistics could have no bearing on the long-term planning being envisaged. At the same time, he was gratified that no delegation had flatly rejected the suggestion that measures should be taken to counteract adverse effects on the economy of the developing countries. He concluded that treaty articles should be drafted to meet any future contingency.

53. His delegation was in full sympathy with the suggestions put forward that the interests of both the consumers and the

producers should be protected, but felt that it was a general problem which could probably be better treated in other fora.

54. The Committee must give expression to the idea that in exploiting the common heritage of mankind special attention should be paid to the interests of the developing countries. It was hardly possible to envisage how that principle could be given concrete form unless treaty articles were drafted to guard against the adverse effects of sea-bed exploitation on the economy of the developing countries.

55. In his delegation's view an appropriate mechanism should be devised to prevent and/or compensate for any negative effects on the economy of the developing countries. Many international instruments had been drawn up in recent years, some of which it had not found necessary to apply. His delegation hoped that the treaty articles under discussion might eventually fall into that category.

56. The CHAIRMAN recalled that at a previous meeting the representative of Chile had asked the Chairman to repeat his summing up of the seminar on the economic implications of sea-bed exploitation.

57. Mr. RATINER (United States of America) said that his delegation had some reservations about including that summing up in the summary record: it might give a misleading impression in view of developments in the Committee's discussions since the seminar. He would therefore prefer the Chairman to give an up-dated version of his summary.

58. After a discussion in which Mr. KEITA (Guinea), Mr. KALONDJI TSHIKALA (Zaire), Mr. KACHURENKO (Ukrainian Soviet Socialist Republic), Mr. RATINER (United States of America), Mr. BARNES (Liberia) and Mr. PRIETO (Chile) took part, the CHAIRMAN suggested that he should read out his summary at the present meeting, and at the next meeting of the Committee give his personal impressions of the Committee's discussions.

It was so decided.

59. The CHAIRMAN read out the following summary:

"As we conclude this two-day seminar on the important question of the impact of sea-bed mining, I think I ought briefly to summarize the proceedings.

"We set out to examine two major questions. The first relates to the adverse effects of exploitation of sea-bed resources on the developing countries, whether producers or not. The second is the steps which the international community, notably the present Conference on the Law of the Sea, should take to meet any such adverse effects.

"There appears to be a consensus even among experts, that, in the nature of things, no available figures are in fact entirely reliable in reflecting the current realities, let alone future ones.

"With regard to the first question, therefore, it is not surprising that no direct answer was forthcoming. My impression is that the experts have been cautious not to make definite positive comments on the subject because they cannot endorse the fact by figures. They agree on the uncertainty about the type and volume of untapped sea-bed resources; the future course of technological developments; the nature of future global needs and demands, seen in terms of the rate of development.

"It is clear that the allegation that there will be adverse effects remains in principle unchallenged. If any challenge exists, it is with respect to the extent of it. This high uncertainty can only go to increase the concerns of a large section of the international community represented by the developing nations.

"This leads to the second question posed before us: what should the international community—i.e. this Conference on the Law of the Sea—do in the circumstances? It is common ground, I believe, that the state of affairs is untenable and

that our programme for organizing the common heritage for the benefit of mankind must ensure that adequate safeguards exist in the institutions we seek to establish to cater for it.

"On the one hand, conditions must not be created to cripple completely the profitable exploitation of the wealth of the area and the benefits deriving therefrom. Mankind needs the type of resources and other benefits available in the area.

"On the other hand, we cannot permit situations where such exploitation is counter-productive—that is, that they produce adverse effects on producers of land-based resources of the same kind.

"A fundamental question is: can this Conference produce detailed solutions in terms of the models produced by experts? Can we agree on a formula to resolve the problems posed, especially while experts find it difficult to submit a reliable one? Are those participating in this Conference in a position to produce such solution in detail?

"The better approach appears to be that an International Authority should be equipped to deal with any exigencies in this field. All we can do at this Conference is to state, in the

treaty articles, the duty of the custodian of the common heritage of mankind—the International Authority—

"(a) to maintain constant study of this problem

"(b) to take appropriate measures to meet such problems promptly if and when they occur.

"To do this, the Authority should, as I have said, have adequate powers. The word 'adequate' should not be construed in a patronizing context. It means full powers for the purpose of inducing effectiveness. It would appear to me that the Authority may have to establish a permanent technical subsidiary organ for the purpose. This organ could work with its own resources or invite the collaboration of existing international organizations. This organ would be far more effective in detecting various needs.

"If it proves in decades to come that no adverse effects flow from exploitation, no one will be hurt. If the contrary proves true, then we would have taken a historic step to ensure that the treaty we hope to produce would not have been in vain."

The meeting rose at 12.40 p.m.

14th meeting

Monday, 19 August 1974, at 4 p.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Economic implications of sea-bed mineral development (*continued*)

1. The CHAIRMAN said that, pursuant to a request by the United States representative, he would give his personal impressions of the debate held by the Committee on the economic implications of sea-bed exploitation. The major concern of the Committee, as he saw it, was to take important political decisions, first on the question of whether exploitation of the sea-bed resources would have adverse economic effects on the developing countries, producing or non-producing, and then on what provisions should be included in the future convention on the law of the sea to contain such effects. Several reports had been before the Committee—United Nations Conference on Trade and Development reports and the report of the United Nations Secretary-General. The UNCTAD reports had categorically asserted that there would be adverse effects on the producing developing countries and had considered certain remedial measures, while the report of the Secretary-General (A/CONF.62/25), giving slightly different statistical data, had also concluded that there would be adverse effects. A working paper submitted by the United States delegation (A/CONF. 62/C.1/L.5) had claimed to differ only slightly from the report of the Secretary-General.

2. He regarded it as significant that the developed countries had called for equal consideration to be given to the situation of developed countries which produced land-based minerals, because that demonstrated that the fears of developing countries were shared by some developed countries. He believed that there was agreement that no country—particularly a developing country—should be exposed to the uncertainties of the future with regard to the effects of sea-bed mining. It had been suggested that land-based sources of certain metals, such as nickel, would have to increase production by 70 per cent in order to meet the total global demand forecast for 1985, and that positive effects of sea-bed mining should be balanced against adverse effects. However, it should be borne in mind

that while any advantageous effects should be promoted, adverse ones should be reduced. Although one representative had questioned the argument that there would be adverse economic implications for developing countries, experts had been reluctant about challenging it. The uncertainties underlined by the debate could only increase the concern of a large section of the international community represented by the developing countries. With regard to the request that the plight of the developed countries should be considered, he assumed that, in accordance with the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction,¹ adverse effects as a whole would be considered in context, the particular interest and needs of the developing countries being paramount.

3. The second question before the Committee was how to meet the threat of adverse economic implications and ensure that adequate safeguards would exist in the institutions to be established to organize the exploitation of the common heritage of mankind for the benefit of mankind as a whole. The debate in the Committee had been useful in bringing out the importance of careful examination of all aspects of the problem. The Declaration of Principles was a positive statement of progressive ideas in favour of realistic global development promoted by benefits to be derived from international activity in the area. He believed that it would preclude measures that could have devastating effects on land-based producers of resources similar to those to be mined from the sea-bed or on other developing countries. It should also preclude any measures that would seriously prejudice steady global economic growth or that might cripple the profitable exploitation of the wealth of the area and the availability of the benefits deriving from it to the legitimate beneficiaries of the common heritage.

4. The Committee had to decide whether it would create a special organ within the Authority to deal with the problem of

¹ General Assembly resolution 2749 (XXV).

possible adverse economic effects by keeping the problem under constant study and taking appropriate measures to meet any problems promptly if and when they occurred, or whether it would try to work out detailed provisions in an attempt to guarantee a solution of the problem of adverse effects. He felt the second alternative would be unacceptable to the majority of States represented on the Committee, as it was not a committee of technical experts and the debate had demonstrated the undesirability of trying to prescribe measures which it might not be possible to implement because of the imprecise nature of the data available. There was no point in adopting measures which might be too inflexible to adapt to unpredictable global developments with regard to the response capabilities of supply to demand in the future. He therefore concluded that the first alternative, which he had previously recommended, was the acceptable answer to the problem. The Australian delegation had proposed the creation of a specialized institution within the Authority for that purpose which, he felt, should not present too many difficulties. Although the detailed resolution of inherent problems should be a matter for such an organ and not for the Committee, the suggestions that had been made were useful in drawing attention to the magnitude of the problems involved and providing preliminary commentary on possible approaches.

5. The Authority should be a strong Authority with adequate powers to cope with any exigencies. The interests and needs of the international community at any given period in history could best be examined and protected in the light of contemporary data. In the current age, the plague of under-development in the developing countries was a serious threat to the declared ideals of the current generation and to international peace. Their plight should therefore be dealt with as a major priority. The Conference, inspired by a consciousness of the need to create laws and institutions that would stand the test of time, must rise to the historic moment. Providing for the rise of new nations did not mean designing the collapse of older nations. The Authority should have the capacity to identify the genuine problems of both developing and developed countries and the comprehensive powers necessary to take measures to combat the evils that threatened mankind in the future, making the fullest use possible of the tremendous benefits offered to man by the untold resources of ocean space.

Report of the Chairman of the informal meetings

6. Mr. PINTO (Sri Lanka), speaking as Chairman of the Committee's informal meetings, said that the Committee had now held a total of 22 such meetings and since his last report at the 11th official meeting had discussed the second main issue before it, namely, conditions of exploration and exploitation. Having regard to the practical implications of the discussion for the work of the Committee in preparing draft treaty articles, it had been suggested that the following three conceptual approaches might be recognized: inclusion in the convention of an elaborate set of rules and procedures governing all aspects of exploration and exploitation, amounting virtually to a "mining code"; omission of mention of conditions of exploration and exploitation in the convention, thus leaving the Authority entirely free to determine conditions of exploration and exploitation in the light of prevailing circumstances; and inclusion in the convention of certain fundamental norms which would constitute a framework within which exploration and exploitation would take place, the Authority being empowered to establish detailed conditions of exploration and exploitation within that framework. There was apparently no desire either to burden the convention with detailed conditions or to delete all reference to conditions. There thus seemed to be substantial agreement that the convention should contain certain basic conditions, rules or regulations, either as articles in the body of the instrument or as an annex or appendix to it. The issue before the Committee had therefore been reduced to deter-

mining the scope and content of those basic conditions, rules or regulations.

7. At the commencement of the discussion in the informal meetings the Committee had had before it an anonymous working paper, Conference Room Paper No. 6, dated 7 August 1974, entitled "Conditions of exploration and exploitation", which contained no more than a list of the main items on which members of the Committee might consider drafting texts. Three further substantive papers had then been submitted to the Committee and discussion had proceeded on the basis of three documents: A/CONF.62/C.1/L.6 to 8. On the last day of discussion there had been some indication that more proposals might be submitted. He had taken the liberty of assuring the members that any delegation would be free to present proposals at any time to the Committee or to any formal or informal forum it might establish and have them discussed and taken into consideration in arriving at a final result.

8. He would not summarize the relatively short but quite substantial debate that had been held, but would make some observations of a general character. In a sense, the opposing points of view had long been before the Committee, and over the past two years points of difference had been brought into sharper focus. Areas of disagreement had been narrowed, not in the sense of bringing opposite sides closer together but in the sense of determining precisely where they were still far apart. The two subjects dealt with in some detail—who might explore the area, and conditions of exploration and exploitation—were the most crucial issues before the Committee and perhaps even before the Conference itself.

9. In his report at the 11th meeting, he had suggested that two broad issues lay at the root of the differences in the Committee: the issue of control by the Authority over sea-bed operations and the issue of the Authority's discretionary power—generally framed in terms of a principle of "non-discrimination"—which had to do essentially with access to sea-bed minerals considered vital by some countries. That was where the process of negotiation must begin if the Committee was to be successful in its efforts. The existing division did not have to do with exclusion from or inclusion in the convention of detailed rules of greater or lesser technical complexity, but essentially, on the one hand, with the degree of control the Authority was to exercise over those entities which would carry out operations on the sea-bed, and, on the other hand, with the extent to which the Authority would be circumscribed by the terms of the convention in the exercise of its discretion. In his view, those were the basic issues to be faced. The four alternative versions of article 9 of the draft convention in document A/CONF.62/C.1/L.3 and the three papers on conditions of exploration and exploitation clearly demonstrated the opposing views. The Committee had established the opposites of the dialectic and was about to commence the task of unifying and reconciling them.

10. It seemed to him that the paper submitted by the United States (A/CONF.62/C.1/L.6) and the working paper presented by the eight Powers (A/CONF.62/C.1/L.8) had much in common, while the proposal in the working paper introduced at the informal meetings on behalf of the Group of 77 (A/CONF.62/C.1/L.7) stood on its own and in many respects, though by no means all, in opposition to the other two proposals. There were, of course, differences of presentation, organization and scope between the drafts submitted by the United States and the eight Powers respectively, but they were fundamentally similar in providing that the role of the Authority should be regulatory rather than controlling. The Authority was given substantial regulatory powers, but control over an operation would seem to lie more with the operator himself or, in the case of the United States, to be divided between the operator and a sponsoring State. It could be, and indeed had been, argued that the Authority should not have too much control since such control could all too easily degenerate into interference and lead to a reduction in efficiency in

the exploitation of the common heritage of mankind; the problem was to determine how much was too much.

11. The draft submitted by the Group of 77, on the other hand, categorically required that all contracts, joint ventures or any other such form of association entered into by the Authority should ensure the direct and effective control of the Authority at all times, through appropriate institutional arrangements. The need for the Authority to maintain control over all stages of sea-bed operations was so essential to the States concerned that that requirement was already embodied in draft article 9 of document A/CONF.62/C.1/L.3, in accordance with which all activities were to be conducted either directly by the Authority or at its discretion through other entities which would then be acting on its behalf, subject always to its control. It could be argued that the need to give the Authority such power derived from unhappy experiences at the national level with the so-called multinational corporations, and that the fact that the Authority would be required to retain such powers of control did not mean that it would actually use them and certainly not that it would abuse them so as to allow the efficiency of particular operations to be impaired.

12. While the draft prepared by the Group of 77 required specifically in paragraphs 4 and 9 that the Authority should have control and clearly implied it in paragraph 7, the other two drafts—in anticipation, it would seem, of proposals for such broad powers and in an effort to forestall them—provided specifically for several controls at particular levels. Both the United States draft and the eight-Power draft provided that the Authority should maintain a regulatory interest in operations through certain performance criteria such as the requirements for periodic expenditures, submission of data, commencement of exploitation in a specified period, non-interruption of performance and relinquishment of areas. The fact that the draft submitted by the Group of 77 did not mention those types of requirements, which reflected acknowledgement of the interest of the Authority as the administrator of the common heritage of mankind, did not, of course, mean that the sponsoring States could not themselves contemplate such basic requirements; what it meant was that they felt it unnecessary to specify such requirements in the convention since they might be considered matters of detail which an Authority, vested with overall powers of control, would legislate in due course. One particular regulatory power was, however, mentioned in paragraph 16 of the Group of 77 draft, namely the power of the Authority to apply the provisions of the convention relating to regulation of production.

13. Regarding the relative weight to be attached to the two basic issues, the issue of control by the Authority over sea-bed operations and the issue of the Authority's discretionary power, one might be tempted to say that the latter far outweighed the former. However, the two were interrelated and if the question of how to orient or limit discretionary powers was resolved there would be no difficulty in resolving the issue of control.

14. The United States draft laid considerable emphasis on the requirement that all specified activities should be conducted in accordance with the convention and the regulations contained in it and with two other categories of instruments which must themselves be in strict conformity with that convention and those regulations, namely, supplementary regulations promulgated by the Authority and the legal arrangements governing the activity concerned. The embodiment in the convention of definite limits to the exercise of the Authority's discretionary powers, and subsequent emphasis on the convention's primacy, would make it possible to safeguard against uncontrolled development of the Authority's power under the convention in directions that were not considered constructive or positive; in that connexion he referred to article I of the United States draft. The conditions emphasized in the United States paper—that qualified entities must be entitled to enter into legal rela-

tionships with the Authority granting them the right to mine (article IV, para. 1); that the general rule should be that the qualified applicant first to apply should be granted the right to mine (article IV, para. 5); that the right to mine should comprise two connected phases without judgement as to performance by the Authority interposed between them (article V, para. 1); and that there should be no suspension of the right to mine except after adjudication by a tribunal and in accordance with its orders and decisions (article VIII)—might be regarded as safeguards sought because of apprehensions that discriminatory or arbitrary action by the Authority might deprive States and their nationals possessing the necessary technology and financial capacity of access to the minerals needed to sustain economic growth. The inclusion of such safeguards and the concept of a generally less obtrusive Authority which went with them would establish a climate of confidence that would attract investors from the developed countries, who alone could put together the technology and expertise necessary to make a reality of sea-bed exploitation in the very near future with benefits for all. The eight-Power draft, though not so explicit in its terms, also appeared to be based on a similar approach.

15. The preoccupations reflected in the draft submitted by the Group of 77, however, were different. While it recognized that security of tenure was essential in order to attract investment in the immediate future, and provided for it in paragraph 10, it projected the concept of a totally new institution conscious of possessing potentially extensive wealth, conscious of its role as the custodian of that wealth on behalf of all mankind, and determined not to let it fall a prey to those who acted for selfish ends. It was inspired by the spirit of variant B of draft article 9, which contemplated that the true role of the Authority would be that of the sole representative of mankind in relation to the sea-bed and its resources and the sole exploiter of those resources. However, lacking financial and technical resources at present and determined to commence functioning immediately, it would act through those who possessed the requisite finance and technology.

16. While taking account of the need to establish appropriate procedures and prescribe qualifications on the basis of which applications for contracts might be made, and providing that the selection of contractors would be made on a competitive basis, paragraph 6 of the Group of 77 text seemed to foreshadow one type of preferential treatment, i.e., that due weight would be given, other things being equal, to applicants which offered the widest possible direct participation by developing countries, particularly those which were land-locked. That should not, however, be regarded as a form of discrimination, since it was simply one of the rules of the game, known and accepted beforehand. A similar concern over the disadvantages of the developing countries was reflected in paragraph 15, providing for transfer of technology, expertise and data to the Authority, which would no doubt have the obligation to disseminate such knowledge as widely as possible. Training of personnel was also provided for in paragraph 15 (b). Of the other two texts, only the eight-Power draft made a comparable reference to transfer of technology: article XI provided for participation in the activities envisaged not merely of nationals of developing countries but of nationals of all countries without sea-bed exploration and exploitation capability. It should be noted, however, that other proposals placed before the Committee by the United States did cover that point.

17. In general, the thrust of the Group of 77 paper was very much toward protecting the common heritage of mankind from unbridled exploitation by the entities through which it expected to have to work in the immediate future. What was basic to the Group of 77 was thus not a concern to allay the apprehensions of investors regarding the use of discretionary powers, which might be left to the Authority itself, but rather a desire to safeguard the resources of the common heritage and certain long-term interests of the developing countries by

giving the Authority adequate powers of control. In their opinion the convention should contain only the rules necessary to orient the Authority in that sense; only such conditions or parameters would be considered so basic as to warrant inclusion in the convention.

18. Although the United States and eight-Power drafts contained considerably more technical detail than the Group of 77 paper, it was not yet clear to what extent such detail was considered of fundamental importance, whether in terms of safeguards concerning the two basic issues or for other reasons. Assuming that such figures as that relating to the maximum contract area were of fundamental importance and assuming a basically similar approach, the difference in magnitude of that area contemplated in the United States paper and in the eight-Power paper was difficult to explain; both papers recognized two basic categories of minerals described in virtually identical terms, but for category (i) minerals the United States paper prescribed a maximum contract area of 300 square kilometres, while the eight-Power paper prescribed an area of 9,000 square kilometres, and for category (ii) minerals the United States paper prescribed a maximum area of 30,000 square kilometres, while the eight-Power paper prescribed 60,000 square kilometres. Moreover, no maximum number of legal arrangements per applicant was contemplated in the United States paper, whereas article IV of the eight-Power paper specified a maximum of six contracts per applicant. It might well be questioned whether an essential relationship did in fact exist between maximum contract area and category of mineral and, if so, whether the prevailing approach was sufficiently widely agreed upon as to warrant inclusion in the convention. If it was to be included, an explanation of the wide disparity would be welcome, since otherwise it would be difficult to persuade those who were currently reluctant to include any technical detail in the convention either that such figures were sufficiently widely accepted at the present time or that they were of such fundamental importance as to warrant inclusion.

19. He had not attempted an exhaustive analysis of the papers before the Committee, but had commented only on what he considered differences of approach on the two key issues of control by the Authority and exercise of its discretionary powers. He was convinced that all members would proceed with the work of the Committee with the same goal in mind, namely, the early establishment of an Authority so structured as to be able to function immediately and produce within a short time the benefits that all countries desired. In order to do that, concessions would no doubt be necessary on all sides. It might be desirable to include provisions in the constituent instruments of the Authority that would encourage the participation of investors; it should be borne in mind that investment no longer flowed only from the developed countries but that several developing countries now had large sums to invest, and the new institution should be one in which all investors would feel encouraged to invest. On the other hand, it should also be recognized that the role of the Authority as custodian of the common heritage was important and that many had a vision of the Authority as a new type of organization which would be endowed with powers to protect the wealth of the sea-bed from exploitation for purely selfish ends and would function democratically and take fair and reasonable decisions. Certain controls by such an organization might have to be accepted on trust, even though they might appear unprecedented. In that way a way could be found to unify and reconcile the opposite views. Some encouragement could be drawn from the view expressed by several delegations that the papers they had submitted were not final but were intended to serve as bases for discussion and negotiation.

20. The third main issue before the Committee was the economic aspects of sea-bed exploitation; it had been discussed by the Committee at formal meetings and at the informal seminar, and the Chairman of the Committee had now summa-

rized the debate. He suggested that it would be useful if delegations were encouraged to submit as soon as possible draft treaty articles on that matter. Two possible areas that might be examined in that connexion were draft article 10 in document A/CONF.62/C.1/L.3 and draft article XLVII, contained in document A/9021 and Corr.1 and 3, volume II, page 156, on a possible planning commission. Presentation of draft texts at the current session of the Conference would mean that texts on every important item would be before the next session of the Conference, ready for negotiation.

21. He congratulated the Committee on the work accomplished in its informal meetings up to the present time, noting that the spirit had so far been one of genuine co-operation, free from acrimony. He thanked all representatives who had introduced texts.

22. Any views he had expressed were his own, and were not binding on any delegation.

23. Mr. FONSECA TRUQUE (Colombia) said that at the 11th meeting of the Committee he had submitted, on behalf of the Group of 77, a text unanimously adopted by the Group containing variant B of article 9 (see A/CONF.62/C.1/L.3). The achievement of that consensus by the developing countries on the subject which had been described as the most important item before the Conference had been debated at length in the informal meetings of the Committee.

24. Many delegations from developed countries recognized that the variant submitted by the Group of 77 contained positive, balanced and flexible elements and constituted a new phase in the process of negotiation. Those delegations had emphasized the need to discuss the question of the conditions which should govern exploitation in the area beyond national jurisdiction, and some of them had expressed the view that the convention should contain detailed rules and regulations in that respect, a criterion which was not shared by the majority of delegations. In an effort to achieve a common position, the Group of 77 had set up a drafting group under the chairmanship of the representative of Peru. The drafting group had prepared a text which represented the consensus in the Group of 77 with regard to the conditions of exploration and exploitation (A/CONF.62/C.1/L.7) and which he was presenting to the Committee for consideration.

25. The document, entitled "Basic Conditions", covered activities in relation to exploration and exploitation which, in the view of the Group, meant all aspects—from research to marketing. The Group considered that it was not the task of the current Conference to include "rules and regulations" or "operational conditions" in the convention. It held the view that those rules and standards should be drawn up by the future Authority. Only the principles and basic conditions defining and delimiting the regulatory power of the Authority should be included in the convention. The Authority would issue appropriate rules and regulations in strict conformity with the basic conditions contained in document A/CONF.62/C.1/L.7 and in the convention. In presenting that document, the Group of 77 was taking no position with regard to where—in the body of the convention or possibly in an appendix—those basic conditions should appear. The basic conditions enumerated in the document had been drafted with a view to safeguarding the principle embodied in paragraph 1 of draft article 9 under which the Authority would conduct all the activities in the zone directly, and with particular reference to the provisions of paragraph 2 of that draft article, which specified the exceptions which could be made to that direct control.

26. Referring to specific points in document A/CONF.62/C.1/L.7, he emphasized that the term "resources" in paragraph 1 referred to *in situ* resources, that is, resources existing in the zone prior to any exploitation. The purpose of the provisions of paragraph 3 was to establish clearly the exclusive power of the Authority to determine the part or parts of the area in

which activities relating to exploration and exploitation might be conducted; in other words, the determination of exploitable areas could not be consigned to third parties. Paragraph 4 was an elaboration of the provisions of paragraph 2 of draft article 9. It defined the meaning of the term "association" in variant B of article 9 by specifying that the Authority should exercise direct and effective control in any form of association it entered into, including joint ventures, through appropriate institutional arrangements including an appropriate reporting system, access to operations by representatives of the Authority and their participation in those operations and the establishment of properly constituted organs. Under the terms of paragraph 5, the Authority would have the power to determine whether operations should be carried out in one or more stages. The stages enumerated should not be considered exhaustive, but merely indicative of the possible scope of the Authority, nor should the order in which they had been listed be regarded as fixed.

27. The Group considered that it was necessary to establish certain requirements with regard to the procedure for applications by third parties to carry out exploitation of sea-bed resources. Paragraph 6 contained provisions to that end, with particular reference to the need for direct participation by developing countries, particularly the land-locked among them.

28. Paragraph 7 established the general principle that a contractor who had satisfactorily fulfilled his contract in one stage of an operation should have priority in the award of a contract by the Authority for a further stage of operations, subject to the provisions of paragraph 6.

29. Paragraph 8 stipulated that the rights and obligations arising out of a contract could not be transferred except with the consent of the Authority and in accordance with its rules and regulations, and paragraph 9 empowered the Authority to enter into joint ventures or other such forms of association with third parties, provided that it retained both financial and administrative control in such ventures.

30. Paragraph 10 gave concrete expression to the general principle that a contractor should enjoy the rights stipulated in the contract provided he did not violate the convention and the rules and regulations laid down by the Authority, while paragraph 11 provided for cases of a radical change in circumstances or *force majeure*, which might require action on the part of the Authority. It was the consensus of the Group of 77 that in view of the lengthy period covered by mining contracts and the rapid advances in technology, the Authority had to have that safeguard.

31. Paragraphs 12, 13 and 14 made explicit what had been said in general terms in previous statements on behalf of the Group of 77, namely that the Authority should not incur any risk, responsibility or financial liability arising out of the conduct of operations under contract to third parties, joint ventures or other such associations. Under paragraph 14, the Authority could use, as a means of payment, such systems as production-sharing and profit-sharing based on the profits and production from the exploitation of the resources of the area.

32. Paragraph 15 enumerated conditions which, in the view of the Group of 77, were essential in order to give effect to the principle of the common heritage of mankind since the process for effecting the transfer of technology it stipulated, strengthened the position both of the Authority and of the developing countries.

33. There was a consensus in the Group of 77 that production regulations should be included in article 10 of the régime and in the powers of the Authority. Paragraph 16 had been drafted with a view to safeguarding the powers of the Authority in that respect under the convention. Finally, paragraph 17 was self-explanatory.

34. He emphasized that the basic conditions for exploration and exploitation submitted by the Group of 77 were without prejudice to the powers of the Authority or to the provisions of the convention.

35. The document submitted by the Group of 77 represented the second consensus achieved by the Group during the Conference and was based on the Declaration of Principles contained in resolution 2749 (XXV). Its provisions were balanced and flexible and had received the support of over 100 States including China, Romania, Spain, Albania, Norway and Sweden. Without deviating from their position or allowing themselves to be influenced by rumours and the insinuations of a delegation that some Powers would be prepared to take unilateral action in view of the scant results which had so far been achieved by the Conference, the developing countries had submitted proposals with a view to achieving a compromise solution as a clear demonstration of their will to negotiate equitable conditions for the exploration and exploitation of the resources of the common heritage of mankind.

36. Mr. THOMPSON FLORES (Brazil) said that he had listened with interest to the report of the Chairman of the informal meetings and the proposals submitted on behalf of the Group of 77 concerning conditions of exploitation. Proposals had also been submitted by the United States and by eight European Powers on that item. At its informal meetings, the Committee had also considered a set of 21 draft articles dealing with the status, scope and basic provisions of the régime (A/CONF.62/C.1/L.3).

37. It was the view of his delegation that the time for debate was over and that the Committee must enter into the negotiating phase. He proposed that a decision should be taken at the present meeting to create a negotiating group to engage in immediate negotiations with regard to the system of operations in the area, the 21 articles concerning the régime, particularly article 9, and also the conditions of exploration and exploitation. He proposed Mr. Pinto (Sri Lanka) for the position of Chairman of that group. Delegations should be represented in the negotiating group and contact groups should be set up to take account of regional and other interests, but the group should be open to participation by all delegations. He further proposed that the Chairman should consult with the chairmen of the regional groups and other interested delegations with regard to the composition of the negotiating group. The question of the régime had been dealt with exhaustively; all delegations had stated their positions and virtually all first stage proposals had been submitted. It was essential that the Committee engage in concrete negotiations to ensure that the Conference established machinery to decide on a future régime.

38. Mr. HYERA (United Republic of Tanzania) supported the proposal by the representative of Brazil and endorsed with pride and satisfaction the nomination of Mr. Pinto as Chairman of the proposed negotiating group.

39. The CHAIRMAN said that as the proposal by the representative of Brazil had not been opposed, he took it that the Committee approved the establishment of a negotiating group and the appointment of Mr. Pinto as Chairman of that group.

It was so decided.

40. The CHAIRMAN invited heads of regional groups to consult with him concerning the composition of the negotiating group.

41. Mr. RATINER (United States of America) said that his delegation considered that the issue of the conditions of deep sea-bed exploitation was critical to the future work of the Committee. He expressed satisfaction that the Committee as a whole had accepted that the fundamental conditions of exploitation must be embodied in the convention.

42. The principal interest of his delegation in the Committee was to negotiate a convention that would guarantee prompt, effective and economic recovery of the mineral resources of the

international sea-bed area on fair and equitable conditions for all. That guarantee was fully compatible with the concept of the common heritage of mankind, and was the most efficient way of achieving benefits and ensuring that all nations would participate in the development of those resources and would also facilitate negotiations of a variety of other important objectives sought by many countries.

43. The key to the encouragement of development of the mineral resources beyond national jurisdiction was the establishment of reasonable conditions of investment and operation which would attract management, technology and financial resources.

44. He introduced the working paper entitled "Draft Appendix of the Law of the Sea Treaty concerning Mineral Resource Development in the International Sea-Bed Area" (A/CONF.62/C.1/L.6) and said that the paper was preliminary in nature and was intended to reflect concepts rather than final detailed provisions. His delegation wished to elaborate its views on the basic conditions. Some delegations had suggested at an earlier stage that the basic guidelines used by the Authority could be found in the treaty text of the régime and that those provisions, roughly corresponding to the Declaration of Principles, would constitute adequate guidance to the Authority in exercising its functions with respect to resource exploitation. He expressed satisfaction that there appeared to be an emerging consensus in the Committee that the fundamental conditions of exploitation should be expressed in greater detail. His delegation considered that the parameters of negotiation on that issue were becoming more clearly defined, which was an extremely important development in the work of the Committee.

45. Several critical issues concerning the fundamental conditions of exploitation must be considered in order to ensure that the convention protected the access of all States to deep seabed minerals. First, the fundamental conditions of exploitation and any future rules must be uniform and non-discriminatory in application.

46. Secondly, the conditions of exploitation must ensure that all who wished to engage in mining were allowed to do so, provided they met and continued to comply with objective criteria set forth in the convention. His delegation believed that several delegations had criticized that concept for two basic reasons: first, several industrialized and some other countries had implied that all good mining areas might be used up by the most technologically advanced countries. It was the view of his delegation that on the basis of available evidence that view was without foundation: the extent of the resource far exceeded the amount of mining which could be economically undertaken by any country or company. Moreover, his delegation favoured the utilization of certain commonly recognized methods for precluding, through appropriate conditions, the taking and holding of rights to mine which could not in a reasonably short period be justified by major investment and full-scale commercial production and was of the view that failure to comply with such conditions should result in forfeiture of rights. Secondly, a few countries, land-based producers, believed that by restricting the area that could be exploited at any one time and the number of countries and companies which could enter into legal relationship with the Authority for exploration and exploitation, they would be able to prevent downward pressure on prices for the minerals they produced. His delegation had presented data in support of the view that there was no significant risk of downward pressure on prices and several speakers from both developing and developed countries had emphasized the important interest of consumers everywhere in that matter. In that connexion, he reiterated the views expressed by his delegation at the 13th meeting of the Committee and its statement in the informal meetings indicating that it was not prepared to negotiate the question of economic implications in each article of the convention or in each of the basic conditions

of exploitation. Criticism of his delegation's position on the method of obtaining rights which was founded on economic implications considerations should be reserved for the negotiation of a single convention article on that question which would take account of both producer and consumer interests. His delegation continued to adhere strongly to the view that in order to ensure fair and secure access by all States to the mineral resources of the area, it was not reasonable or proper to impose restrictions on the area available for exploitation or the number of such areas which a particular country or company might be permitted to mine pursuant to legal arrangements with the Authority. Moreover, such restrictions tended to limit the tangible and intangible benefits deriving from such exploitation to the international community as a whole, that is, not only revenues but the benefits related to technological progress, the transfer of knowledge and skills and the greater availability of those resources to all consumers.

47. Thirdly, the fundamental conditions of exploitation must ensure that the basic contractual terms upon which an operator had decided to make his investment would not be altered during the period of his contractual relationship with the Authority. His delegation believed that a general consensus had emerged during the current session of the Conference which recognized the importance of providing for security of investment in order to ensure the success of the Authority and access for all nations to sea-bed resources.

48. Fourthly, in view of the magnitude of the investment required and the risks involved, the conditions of exploitation must clearly state that the Authority would allow entities at their option to proceed automatically from the initial phases of mineral development to the final phases where remuneration occurred.

49. Fifthly, the conditions of exploitation should only apply to commercial activities which occurred within the international sea-bed area and therefore not to transportation by sea, processing and marketing or scientific research.

50. Finally, the basic policy objectives of the Authority must be clearly stated in the fundamental conditions of exploitation in order to make it possible to assess whether supplementary regulations promulgated by the Authority were consistent with the convention.

51. In addition to the items already listed, such basic policy objectives would include protection of the marine environment and guarantees that mining would be conducted safely, ensuring that miners were diligent and serious in their efforts to extract resources, acquisition by the Authority of sufficient and reliable data to ensure effective performance of its functions, promotion of the technological advancement of developing countries, allowance for the meaningful participation in exploitation by the States which did not at present have the necessary technological and financial capacity for such participation and provision for the sharing of proceeds on an equitable basis. His delegation believed these were the most essential.

52. Conditions of exploitation were part of a larger system which must protect the integrity of the Authority and the interests of those working with it. To ensure adequate opportunity for adjustment of the system to meet changing technology and cope with new information, the Authority must contain a fair and responsive rule-making system along the lines of that used with great success by the International Civil Aviation Organization. Rules should be drafted by a specialized subsidiary organ, forwarded to all States for review after approval by the council and, if, after a period of say, 90 days, less than one third of the members of the Authority had objected, they would become binding. That system would provide maximum opportunity for expert review in the Authority and by Governments and avoid the risk of undue influence by one or another of the organs of the Authority. Whatever discretion was given to the Authority, his delegation emphasized the need for a

system of checks and balances. The dispute settlement organ must play an important role in the process of sea-bed development, and the executive organ must be composed so as to fairly reflect the balance of interests existing in that new experiment in international cooperation.

53. It was necessary to adopt conditions of exploitation that the Authority would include in its legal arrangements when it came into being since the Authority would receive applications for rights on the first day. In an attempt to facilitate the work of the Conference, his delegation had attempted to outline those issues which it considered to be of the greatest importance to the negotiation of conditions of exploitation and had stated its views in more conceptual terms than could be done through the presentation of precise treaty texts.

54. In conclusion, he expressed his appreciation for the personal summary presented by the Chairman at the request of his delegation, on the economic implications of sea-bed exploration and exploitation. However, he wished to indicate that in the view of his delegation, considerably more balance had existed in the discussions, particularly with regard to the interests of consumer countries, than had been reflected in the Chairman's personal summary. His own personal assessment was that statements by members of the Committee had reflected an awareness of the interests and problems of consumer countries, particularly consumer developing countries, as well as the need to provide measures to protect the interests of developing producer countries.

55. The CHAIRMAN invited the representative of the United States to read his personal summary. It was his view that the interests of both consumer and producer countries could best be dealt with in the Authority. He had therefore confined his summary to the possible adverse economic effects of the exploitation of sea-bed resources and the measures which might be taken to alleviate such effects, and to suggesting the creation of machinery within the Authority to deal with all global problems.

56. Miss MARTIN-SANE (France) thought that the excellent report of the Chairman of the informal meetings should be reproduced *in extenso* in the summary record.

57. The French delegation was one of eight countries which had submitted a draft of an annex to the convention (A/CONF.62/C.1/L.8) because the Governments of these countries considered that it was essential to spell out the conditions of exploration and exploitation in any such convention. What was needed was a kind of charter of the mutual rights and obligations of the International Authority and contractors. It was inconceivable for mankind to embark upon such an unprecedented adventure in its history as the exploitation of the resources of the sea-bed without specific guidelines covering the activities of prospection, evaluation, and exploitation. For those reasons, the text prepared by the Group of 77 and circulated as document A/CONF.62/C.1/L.7 was unsatisfactory.

58. The sponsors of document A/CONF.62/C.1/L.8 intended to furnish an exhaustive list of conditions governing activities in the international sea-bed area, but merely to provide the Committee with a concrete basis for reflection.

59. There appeared to be a certain amount of confusion concerning section VII of document A/CONF.62/C.1/L.8 with regard to the size of the areas to be granted for exploration. The figures for the maximum surface of those areas in that section did not take into account the relinquishment of one third of that area provided for in section IX.

60. The three texts (A/CONF.62/C.1/L.6 to 8) which had been submitted to the Committee, and any others that might be submitted, would provide a basis for a discussion which should begin during the current session and resume at the beginning of the next session, as the time for general statements had long since passed.

61. Her delegation had some comments to make with regard to the President's statement at the beginning of the meeting, but in view of his reply to the representative of the United States, it preferred to defer its statement until it had had time to study carefully the text of the President's remarks.

62. The CHAIRMAN said that various delegations had communicated to the Chair their wish that all the statements at the current meeting should be included *in extenso* in the summary record in view of the importance of the issues involved and of the statements themselves.

It was so decided.

63. Mr. MOTT (Australia), Rapporteur, said that he wished to consult the Committee with regard to the kind of statement it wished him to prepare to summarize the Committee's work before the Conference resumed plenary meetings. He preferred not to use the word "report" because of its formal connotations and because of the procedure of acceptance it implied. What he had in mind was something less formal, along the lines of a statement or an account of the Committee's activities. Such a format would be more appropriate in view of the fact that the Committee had reached an intermediate stage in its deliberations. As far as he knew, no delegation favoured a comprehensive or substantive statement along the lines of previous sea-bed Committee reports, which incorporated lengthy summaries of the Committee's discussions. The statement he was proposing would by definition be non-controversial and would permit the Committee to continue its work without getting caught up in argument concerning the nature of the report.

64. One of the problems he would have to deal with was the fact that much work had been done in informal meetings. On the other hand, several important statements had been made at regular meetings of the Committee by the Chairman, the Chairman of the informal meetings and various delegations, and they should of course be reflected in the Rapporteur's statement. Furthermore, several documents had been introduced in the Committee. There was therefore no lack of material. The contents of the statement would include the establishment of the committee, its mandate, its documentation; and a summary of its work covering the general discussion, the discussion on the economic implications of the mining of minerals from the sea-bed, the establishment of the negotiating group, and the work of the informal meetings. It would also include some form of recommendation for the Committee to complete its work at the future session of the Conference. The statement would be presented to the Conference in plenary meetings for incorporation into the general report.

65. In accordance with a practice which had worked fairly well in the past, he intended to circulate a draft of the statement soon, in order to facilitate its acceptance. It should meet with general approval since it would be factual in nature. The need for a formal paragraph-by-paragraph acceptance of the statement might therefore be avoided. He requested delegations which had any problems with regard to the statement he was proposing to prepare to consult with him as soon as possible.

66. Mr. DE SOTO (Peru) said that he did not propose to deal with a matter of substance but rather with a point of order in connexion with article 37 of the rules of procedure.

67. The representative of Brazil had made a proposal for the establishment of a negotiating group to promote a decision on the system of exploitation to be applied in the international sea-bed area. That was an excellent proposal, and the entire Committee seemed to agree that the time for such negotiations had come. However, several obstacles were standing in the way of complete agreement. First of all, with only eight working days left, time was running out. Furthermore, several delegations appeared to be either unable or unwilling to make decisions now and appeared to wish to wait until the next session instead. His delegation had already underlined the need to resolve the questions of the system of exploitation and article 9

at the current session in Caracas. Since it was already manifest that certain positions were non-negotiable, all efforts to reach a general agreement could be considered to have failed. He therefore proposed that the Committee, parallel to the work of the negotiating group, consider the advisability of setting in motion the decision-making procedure laid down in article 37 of the rules of procedure in an attempt to obtain a decision with regard to the system of exploitation and article 9. He had asked to make a statement at the present moment in order to give the members of the Committee some time to reflect upon his proposal before the next meeting.

68. The CHAIRMAN said that when a formal proposal was before the Committee he would of course apply all the relevant provisions of the rules of procedure. However, the Committee would not proceed to a vote until it had been determined that all attempts to reach a general agreement had failed.

69. Mr. ALLOUANE (Algeria), speaking in support of the proposal made by the representative of Peru said that the time remaining, including Saturdays and Sundays if necessary, should be devoted to reaching an agreement on article 9. If by

28 August no agreement had been reached, the provisions of article 37, paragraph 2 (a), should be applied.

70. Mr. QUADRUD-DIN (Pakistan) and Mr. KEITA (Guinea) also supported the statement made by the representative of Peru.

71. Mr. RATINER (United States of America) said that in the view of his delegation, the representatives of Peru and Algeria had not spoken on a point of order; in fact, their statements were out of order. They should therefore be excluded from the summary record.

72. Mr. ALLOUANE (Algeria) emphasized that he had spoken earlier in support of the representative of Peru, and not on a point of order.

73. The CHAIRMAN said that to his understanding the proposal of the representative of Peru did not require an immediate decision by the Chairman, as provided in article 25 of the rules of procedure. He took it that the representative of Peru had merely reserved his right to invoke the rules of procedure at an appropriate time in the future.

The meeting rose at 6.15 p.m.

15th meeting

Tuesday, 20 August 1974, at 4 p.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Economic implications of sea-bed mineral development (concluded)

1. Mr. IGUCHI (Japan) said that working paper A/CONF.62/C.1/L.9 did not represent the final position of the Japanese Government on the conditions of exploration and exploitation of the resources of the international sea-bed area. His delegation was submitting that paper now in order to observe the provisional deadline for proposals on that item, so that it could be studied in connexion with the three other proposals (A/CONF.62/C.1/L.6 to 8) before the Committee.

2. The basic conditions governing the exploration and exploitation of sea-bed resources must be identified in advance and embodied in the convention so as to ensure the efficient and effective operation of the sea-bed activities to enrich the world community with the fruits of the common heritage of mankind. It would be undesirable to leave the decision on basic conditions to the future international machinery, since the interest of the international community required the expeditious utilization of managerial, financial and technological resources of pioneer industries.

3. No country wished there to be anarchy, instability or inefficiency in the exploitation of the common heritage of mankind, and consequently there was a need to establish objective criteria for selecting eligible entities, defining objectives and the various phases of activities, determining the nature and content of rights and duties, establishing international standards, and choosing among competing applications from contractors. It was essential to draft basic norms to govern such matters in order to establish a stable relationship between the Authority and entities engaging in exploration and exploitation activities. The effective mobilization of managerial, scientific technological, and financial resources of existing enterprises was the key to the success of the international régime, and conditions of exploitation should be established to induce enterprises to work under the international régime for the benefit of the inter-

national community. The Japanese working paper had been drafted with that consideration in mind.

4. His delegation welcomed any further suggestions for improving or supplementing its working paper since it had not had sufficient time to examine all aspects of the various complex issues involved.

5. In the Japanese working paper the activities of exploration and exploitation had been divided into three phases, namely, general survey, evaluation and exploitation. Scientific research, processing, transportation and marketing had not been included.

6. The first phase, general survey, should be as free and open as possible and therefore a system of registration which gave rise to a non-exclusive right renewable every two years had been adopted.

7. The second and third phases, evaluation and exploitation, would be conducted on the basis of legal contracts concluded between the Authority and eligible entities. The Authority should be willing to enter into a contract whenever a proposal for efficient and effective exploitation of resources was made in accordance with established rules and regulations. The selection of contractors should not be arbitrary. However, in the case of competing applications, the Authority should choose one contractor on the basis of the two objective criteria proposed in the Japanese working paper.

8. There would be no limit to the size of the area in which a general survey could be conducted. In the case of evaluation and exploitation for which exclusive rights were granted, the size of the area would be determined on the basis of the criterion of effective conservation and utilization of resources. The areas should be defined by co-ordinates of latitude and longitude. A number of technical factors should be taken into account in determining the actual size of areas in which permission was granted for the exploitation of different categories of minerals. His delegation was provisionally proposing 60,000 square kilometres as the optimum area for the exploitation of

manganese nodules. A system of relinquishment was also envisaged in the Japanese working paper whereby a contractor would renounce one half of the contract area upon attainment of commercial production. Such a system would permit the reservation of promising mining areas for late-comers and assist the developing countries to participate more fully in the development of sea-bed resources. His delegation attached great importance to the widest possible participation of nationals of developing countries in the exploitation of sea-bed resources, and it would do its best to promote the transfer technology they desired.

9. The Japanese working paper also included a system of inspection by the Authority to guarantee that contractors complied with their obligations under the convention and any other applicable rules. To ensure that areas would not lie unused after the conclusion of a contract, the obligation to invest certain sums of money regularly had been imposed on contractors. Contractors would also have to comply with other international standards relating to the conduct of operations, navigational safety, preservation of the marine environment and installations and devices. Provisions on compensation for damage had also been included, and in the case of pollution damage the liability of contractors or subcontractors was absolute.

10. Mr. MUKUNA KABONGO (Zaire) said that the question of exploration and exploitation of the international sea-bed area revealed the basic differences between the industrialized countries on the one hand and the producers of land-based minerals, especially under-developed countries, on the other. While the possibility of exploiting the minerals of the sea-bed was a welcome prospect for consuming countries, it was a cause of serious concern to developing countries whose economies were largely dependent on the exploitation of raw materials.

11. Problems of development concerned the international community as a whole. Developing and industrialized countries alike had their respective contributions to make towards the improvement of the human condition, based on prosperity, well-being and justice, which were the essential conditions of international peace and stability.

12. The economic implications of the exploitation of the resources of the international sea-bed area should be viewed from the perspective of justice and the equitable sharing of the benefits that would accrue. Access to scientific and technical know-how was of primary importance at a time when an international superstructure was about to be established to manage the common heritage of mankind.

13. Confidence in the International Authority would depend on how far agreement was reached on the principles governing its action. In that connexion, document A/CONF.62/C.1/L.7 was of great value both in itself and as an instrument for negotiation. Given the flexible approach that was the key-note of the Conference's work, negotiations on that basis should lead to a consensus. The basic conditions defined in document A/CONF.62/C.1/L.7 was a start towards giving effect to the principle of the common heritage of mankind. That document could stand improvement, which would come from exchanges of views and future negotiations.

14. Mr. WUENSCHÉ (German Democratic Republic) said that the Committee had undoubtedly made progress in the past weeks thanks to the compromises made by many delegations.

15. A supra-national organization to which States would transfer all their rights with regard to the international sea-bed area was not suited to the task of exploiting the mineral resources of the area, especially since many aspects of deep-sea mining were new and unfamiliar.

16. The right of all States to engage without discrimination in the exploration and exploitation of the resources of the sea-bed should be expressly recognized in the convention.

17. His delegation supported variant A of article 9 which appeared in document A/CONF.62/C.1/L.3 with regard to the question of who might exploit the area.

18. Although his delegation held different views on some specific issues, document A/CONF.62/C.1/L.8 was a suitable basis for negotiations aimed at reaching an agreement satisfactory to all.

19. His delegation was optimistic about the possibility of reaching agreement in Caracas and at the next session of the Conference. He emphasized however that both legal theory and the practice of States confirmed the view that norms of international law could be codified only by universal agreement and not merely by the decision of a majority.

20. Mr. HARAN (Israel) commenting on the view that the international sea-bed régime should be a catalyst of a new order of social justice, said that his delegation believed that it should also be a catalyst of a new order of distributive justice.

21. As originally conceived, the international area was to comprise that portion of the sea-bed and ocean floor beyond existing national jurisdictions. However, the contemplated extension of the various zones of national jurisdiction would bestow increased resources on a number of coastal States and correspondingly reduce the dimensions of the international area. Many countries such as Israel would not receive any benefit, or might even suffer, from the extension of marine resource jurisdictions. Such countries had an interest in guaranteeing that the resources of the international area would effectively be made available to mankind as a whole. His delegation would therefore evaluate any proposals before the Committee in terms of whether they were conducive to the effective and rational exploitation of sea-bed mineral resources.

22. Basic conditions governing the exploration and exploitation of the international sea-bed area should be spelled out in the future convention on the law of the sea. Such conditions would include non-discrimination, security of tenure and a system for the settlement of disputes to ensure against any arbitrary interference with exploration and exploitation activities so long as they were carried out in accordance with existing standards relating to the prevention of marine pollution and freedom of navigation.

23. The nationals and companies of many States would not be able to participate in many sea-bed activities because of geographical, financial or technological limitations. Therefore, the conditions of exploration and exploitation should take that fact into account and ensure at least the indirect participation of such persons and companies in the form of technical training, transfer of technology, and subcontracting. Provision should be made to facilitate the participation of land-locked, shelf-locked and other geographically disadvantaged States in exploration and exploitation activities in the international area. For example, no customs duties should be imposed on the sea-bed mineral production of contractors or entities who for geographical reasons were precluded from shipping that production to their home ports. Steps should also be taken to enable contractors or entities, who for financial or technical reasons could not immediately participate in mining activities, to do so at a later stage. This could be done by drawing up performance and relinquishment requirements so as to ensure that all the prime areas would not remain indefinitely under the control of those entities, who were already actively prospecting when the Authority was established.

24. In assigning contracts, the International Authority should take into account whether prospective contractors came from States which had not benefited materially from the extension of marine resource jurisdictions. The International Authority should also receive at its discretion its share of the mineral production of the area in kind so as to enable it, if desired, to accumulate a buffer stock which could be used for purposes of commodity stabilization.

25. Mr. CHAMBERLAIN (United Kingdom) said that his delegation understood that the statement made by the Chairman at the 14th meeting of the Committee had been a personal summary of the debate on the economic implications of sea-bed mineral exploitation. If that summary was to be reflected in any report the Committee might make to the plenary of the Conference, he was bound to record that his delegation did not share all of the Chairman's conclusions. Although the Chairman referred to one of the points made by the United Kingdom delegation, namely that the fears of adverse economic effects from deep-sea mining upon all States had been greatly exaggerated, another major point made by his delegation had not been included in that summary, namely, that the Sea-Bed Authority was not an appropriate organization for arranging commodity agreements. Should such agreements prove necessary, they would have to be made on a world-wide basis, embracing not only the mineral production of the international sea-bed area but land-based production as well. The agenda of the Trade and Development Board of the United Nations Conference on Trade and Development, which was meeting in Geneva that same week, included this item. His delegation reserved the right to make a further statement on that point after it had been able to study more carefully the Chairman's personal summary.

26. In his report on the informal meetings, the representative of Sri Lanka had referred to differences in some of the figures included in documents A/CONF.62/C.1/L.6 and 8. Those differences were more apparent than real. In an endeavour to simplify the draft by providing, where feasible, identical conditions for hard minerals and hydrocarbons, the sponsors of document A/CONF.62/C.1/L.8 had included a provision for relinquishment in article IX which, while well adapted to the needs of hard mineral mining, was not so well adapted to the requirements of hydrocarbons. Continental shelf areas now being offered for hydrocarbon exploration by various nations were in many cases measured in individual exploration blocks of tens of thousands of square kilometres. In undertaking hydrocarbon exploration of the deep sea-bed, therefore, there could be little doubt that exclusive exploration areas of at least comparable size should be made available. However, unlike the hard mineral industry, the nature of hydrocarbon exploration was such that it would be reasonable to provide for progressive relinquishment at two or three-year intervals, thus leaving the explorer with a final right to an area or areas totalling about 500 square kilometres. That figure was not markedly different from the one proposed in document A/CONF.62/C.1/L.6 for the exploitation phase. With regard to the size of areas for superficial mineral deposits proposed in document A/CONF.62/C.1/L.8, the original area of 60,000 square kilometres after relinquishment of one third was not very different from the 30,000 square kilometres proposed in document A/CONF.62/C.1/L.6.

27. Mr. VANDERPUYE (Ghana) said that his delegation had sponsored document A/CONF.62/C.1/L.7 and supported it unreservedly. The Group of 77 favoured direct control by the proposed Authority over all stages of exploitation operations.

28. The proposals submitted by the United States (A/CONF.62/C.1/L.6), and those of eight European Powers (A/CONF.62/C.1/L.8) and Japan (A/CONF.62/C.1/L.9) were based on the same concept of minimum control by the Authority in the exploitation of the resources of the area, although those of the United States were more balanced in that they conceded greater control to the Authority in certain stages of the operations.

29. Article IV, paragraph 1 (f) and article X of the United States draft appendix envisaged payments to the Authority. His delegation did not agree with that concept since it appeared to affect the title of the Authority to the minerals in the area envisaged in article 2 of the proposals submitted by the Group

of 77. Article V of the United States proposals contained specific provisions concerning forfeiture and suspension of the right to mine, which were absent from the working document by the European Powers, which, in fact, allowed the contractor to relinquish its allocation and opt out of the contract without giving the Authority a corresponding right to suspend the contract or reduce the area allocated to a contractor. It also allowed assignment of the contract without the consent of the Authority. Such arrangements were unsatisfactory and unacceptable to his delegation, as was the size of the contract area envisaged in article VII of document A/CONF.62/C.1/L.8 and the foot-note to paragraph 6 of document A/CONF.62/C.1/L.9. In view of the explanation by the representative of the United Kingdom, it would appear that that article should be redrafted. Under article IV of document A/CONF.62/C.1/L.8 an applicant could hold up to six contracts in respect of each category of resources, or up to 414,000 square miles, at any given time. His delegation considered that that area was unrealistically large and rejected that proposal. In fact it considered that all the proposals in the paper submitted by the European Powers were weighted in favour of the exploiter without providing corresponding safeguards to protect the common heritage of mankind. Furthermore, all three documents contained details which were best omitted from a document outlining basic conditions which were intended as general guidelines for awarding contracts and not as the specific provisions of a model contract.

30. The CHAIRMAN, replying to the representative of the United Kingdom, reiterated that the summary of economic implications which he had provided at the previous meeting was a personal assessment. If anything had been omitted, it was because he had attempted not to present a report. When decisions were taken he would ensure that all the relevant factors, comments and opinions were taken into account.

31. Mr. MARTIN (Federal Republic of Germany) said that the proposals submitted by the Group of 77 were a useful contribution to the work of the Committee. However, the views of his delegation differed from those of the Group on some aspects of the basic conditions.

32. His delegation doubted whether the spirit of the Declaration of Principles required that title to the area be vested in the authority as provided in paragraph 1 of document A/CONF.62/C.1/L.7. Much would depend on the structure of the Authority which had not yet been discussed. Article 9 of the convention could not be considered independently of the basic conditions or the structure of the Authority.

33. His delegation could not wholly agree with paragraph 3 since it had understood that the purpose of the Authority would be to promote rather than hinder the exploitation of resources. It also had reservations concerning the terms of paragraph 5. In particular, it considered that marketing, which was important to consumer countries, was outside the sphere of competence of the Authority. He expressed concern that under the provisions of paragraph 6 (b), a decision by the Authority would be regarded as final. His delegation had understood that the concept of mandatory dispute settlement had been accepted in principle. The rules and regulations referred to in paragraph 8 should be discussed at the current Conference and incorporated in the convention.

34. He did not intend to comment on the remaining paragraphs of the document, but that did not mean that his delegation agreed with the proposals it contained. He preferred to focus on the positive aspects of the Group's proposals, which were not so much in the wording as in the fact that they represented an attempt to deal with the future relationship between the Authority and exploitation entities. In particular, the statements by the representatives of Colombia and Nigeria at the informal meetings encouraged the hope that negotiations would be fruitful.

Organization of work

35. Mr. DE SOTO (Peru) explained that, at the previous meeting, he had not, as the Chairman had understood, intervened to reserve the right to call a vote. There was no need to reserve what was a permanent right. He had intervened to suggest that as a measure of self-discipline, the Committee should set in motion the procedure provided for under article 37 of the rules of procedure. The representative of the German Democratic Republic had stated that decisions should be taken by general agreement and never by majority. While Peru was a party to the "gentleman's agreement" which had been endorsed by the current Conference, the rules of procedure also provided for other methods. The ideas he had put forward at the previous meeting were in accordance with those rules.

36. With regard to the negotiating group, his delegation considered that it should be an official subsidiary organ of the Committee in accordance with the provisions of rule 50, and that, as such, it should be subject to all the relevant provisions of the rules of procedure.

37. Mr. WALDRON-RAMSEY (Barbados) felt that it would be useful to review the decision to set up a formal negotiating group. It was impossible to conceive that in the 10 days left to the Conference such a group could successfully tackle the problems relating to article 9 in particular, as well as the basic conditions and articles 1 to 21. Furthermore, the representative of Peru had suggested the possibility of implementing the provisions of rule 37 of the rules of procedure. Under its present mandate the negotiating group would have to be a group of the whole.

38. He considered that it had been procedurally unwise to invite Dr. Pinto to act as Chairman of a formal negotiating group. The Chairman of the Committee should have been invited to assume that position in order to enable him to assess the progress of the negotiations with regard to possible implementation of rule 37.

39. The Committee should decide at the current meeting whether it was impossible for the negotiating group to fulfil its mandate in the limited time available and whether consequently, the group should be held over to the beginning of the next session; alternatively it should decide to reduce the mandate of the negotiating group. A possible solution would be to establish a formal negotiating group under the chairmanship of the Chairman of the Committee to negotiate exclusively on article 9. The basic conditions could be considered in so far as they were relevant to those negotiations. The work of the Committee could not advance until conceptual and philosophical differences had been resolved.

40. The proposals submitted by the United States and those in document A/CONF.62/C.1/L.8, which he regarded as one and the same, were unacceptable to his delegation. They were based on the concept that the international area was a *res nullius* in which the Authority would act simply as a register for mining prospectors, contrary to the proposals submitted by the Group of 77 which provided that title to the area and its resources and effective control over the exploitation of those resources would be vested in the Authority.

41. The CHAIRMAN said that he found himself in a somewhat difficult situation because of the way matters had developed and also because he himself was personally involved in his capacity as Chairman. He recalled that at the 11th meeting of the Committee the representative of Brazil had urged the Chair to begin consultations immediately with members of the Committee with a view to establishing negotiating machinery on article 9. Subsequently, at the 14th meeting of the Committee, the representative of Brazil had proposed that a formal negotiating group, presided over by Mr. Pinto, the Chairman of the informal meetings of the Committee, should be established to negotiate articles 1 to 21, with particular emphasis on article 9 and the basic conditions of exploitation; the Com-

mittee had adopted that proposal. Acting on that decision, he had begun consultations with members of the Committee on the composition of the formal negotiating group; he was encountering some difficulty but would continue consultations and report to the Committee the following day. If, however, the proposal made by the representative of Barbados was approved, he would have to seek further instructions from the Committee.

42. Mr. TRAORE (Mali) asked if any new factors had to be taken into account which would necessitate a reconsideration of the decision the Committee had taken at its previous meeting. In particular, he inquired if the difficulties being encountered by the Chairman in his consultations concerning the composition of the proposed formal negotiating group were at the regional group level or whether they involved new elements. He also asked if the proposal made by the representative of Barbados arose from the Committee's failure to distinguish between the old and new mandate of the Chairman under the two proposals made by the representative of Brazil, or whether new developments had made the previous day's decision inapplicable.

43. The CHAIRMAN said that as a crucial point had been reached in consultations on the establishment of the group, it would be inadvisable to report at the present time on the status of those consultations. The only new element to be taken into account by the Committee was the observation by the representative of Barbados that the mandate of the formal negotiating group proposed at the previous meeting by the representative of Brazil was too wide, with the result that too many members of the Committee wished to participate in it.

44. Mr. GONZALEZ LAPEYRE (Uruguay) agreed with the representative of Barbados that it was necessary to restrict the scope of the negotiations and to limit the formal negotiating group to the current session of the Conference.

45. Mr. FONSECA TRUQUE (Colombia) said that he was speaking in the hope of resolving a difficult situation so that the Committee could benefit from the efforts and considerable progress it had made in the last few weeks. He believed there was a broad consensus in the Group of 77 that a negotiating group should be established, with restricted membership, but in which any member of the Committee could participate if he so desired. Since there was so little time left, he felt the group should concentrate on article 9 and the basic conditions of exploitation. With regard to the composition of the negotiating group, he himself agreed with the United States representative that 25 or 30 members would be ideal, but he was willing to consider any reasonable compromise formula. As a compromise formula, he suggested nine representatives from each regional group, and one representative for each proposal, namely the representatives of the United States, Japan, Western European States, the Group of 77, and Australia, giving a total of 50 members. That might seem large to some, but it was a compromise suggestion which he was making after consultation with members of the Group of 77.

46. Mr. WARIOBA (United Republic of Tanzania) said that his delegation had found itself in a difficult position with respect to the turn of events which had taken place in the Committee at the current meeting. The day before, it had supported the Brazilian proposal to set up a negotiating group with Mr. Pinto as Chairman. In supporting that proposal, his delegation had been aware of what had previously taken place and had offered its support, fully realizing that a consensus existed at that time. Indeed, the quick acceptance of the proposal was also an indication that a consensus had existed then. Otherwise, there would have been a request for further consideration of the proposal before a decision was taken.

47. There was now a request to review that decision and it seemed that that request was based on two issues, namely, that the mandate of the negotiating group would be too wide and

that it might not be able to commence negotiations. His delegation did not believe that the Committee was in the process of commencing negotiations. On the contrary, negotiations had been taking place for a long time and for more than four weeks the Committee had been negotiating on the issues to be referred to the negotiating group. Those negotiations had been so intense that the issues were now quite clear; there were only two conceptual approaches to the matters to be referred to the negotiating group, i.e. two conceptual approaches to the régime. The Committee had earlier decided to concentrate on certain issues, namely who should exploit the area, the best conditions for such exploitation and the economic implications. Those were some of the crucial issues with respect to the régime and the Committee now had to reconcile the two conceptual approaches. It could therefore be said that the mandate of any negotiating group that would be set up had been narrowed and it was quite possible to discuss further the narrowing of that mandate in a smaller open-ended group. Members should now move to reduce further their differences on the régime and his delegation would find it extremely difficult to agree to review the matter and find some other method, since there was very little time left for negotiating.

48. Perhaps it would have been proper to request the Chairman of the Committee to preside over the negotiating group. That was an important suggestion but when his delegation had supported the Brazilian representative's proposal the day before, it had been, and it still was, under the impression that consultations had taken place, that all were aware of the action taken in the Committee earlier and that a consensus had emerged on the question of the chairmanship. While his delegation would be happy to have the Chairman of the Committee preside over the negotiating group, it could see no reason to object to Mr. Pinto serving as Chairman. The most important thing now was to see that the work was done and his delegation did not believe that proposing Mr. Pinto in any way contributed to a slight to the Chairman of the Committee. Even if the Committee were to review and change the decision, his delegation did not believe that that would in any way indicate that Mr. Pinto was not capable of presiding over the negotiating group. Under those circumstances there was no justification for changing the decision taken the day before. The Committee had taken many decisions which sometimes conflicted with earlier ones and unless there were compelling reasons for considering that the decision was fundamentally wrong, it should not be changed. The Committee should therefore establish the negotiating group without delay.

49. Mr. TOURE (Mauritania), Mr. KEITA (Guinea) and Mr. MUKUNA KABONGO (Zaire) expressed the view that the Committee should not reconsider the decision it had taken at its 14th meeting.

50. Mr. ALLOUANE (Algeria) drew attention to rule 36 of the rules of procedure. He expressed the hope that a ruling by the Chairman would obviate the need for the application of that rule.

51. Mr. VANDERPUYE (Ghana) said that, although he did not believe the Committee should review the decision it had taken the previous day, the terms of reference of the negotiating group should be restricted to draft article 9 and the

basic conditions of exploitation. The chairmanship of the negotiating group should not be an issue. The Chairman should continue consultations on the composition of the group and report back to the Committee as soon as possible. Any negotiating group established should be carried over to the next session of the Conference.

52. Mr. ADEMAKINWA (Nigeria) said that it would have been helpful if the Chairman had reported on how far he had proceeded with the consultations on the establishment of negotiating machinery he had agreed to undertake at the request of the representative of Brazil at the 11th meeting. He supported the views of the representative of Barbados that the original procedure suggested should be followed and that the Chairman should fully explore all possibilities for negotiation, perhaps informally.

53. Mr. CARAFI (Chile) said he understood that any negotiations should be handled by the Chairman. The negotiating group proposed by the representative of Brazil at the previous meeting to be chaired by Mr. Pinto should discuss the items referred to it and then report back to the Committee.

54. Mr. Soo Gil PARK (Republic of Korea) said that the Committee should abide by the decision it had taken at the previous meeting. The mandate of the proposed negotiating group should, however, be defined more clearly; in particular, a decision should be taken on whether the group should be dissolved at the end of the current session of the Conference, in which case a small group would be more efficient, or whether it should be carried over to the next session of the Conference, in which case a larger group representing all interest groups, along the lines suggested by the representative of Colombia, would be desirable.

55. The CHAIRMAN suggested that, as well as continuing consultations on the composition of the negotiating group, he should also consult with members of the Committee on the mandate of the group.

56. Mr. RATINER (United States of America) said that he had understood that the mandate of the negotiating group had been decided by the Committee. If there was to be any further consideration, even informal, of its mandate, he would request the application of rule 36 of the rules of procedure.

57. Mr. WALDRON-RAMSEY (Barbados) considered the position taken by the United States representative untenable, as a formal decision by the Committee did not preclude informal consideration of that decision.

58. Mr. RATINER (United States of America) rejected the statement made by the representative of Barbados, observing that since rule 36 of the rules of procedure had not been applied to the proposal by the representative of Barbados purely out of courtesy, the discussion of that proposal should not be continued.

59. The CHAIRMAN said that the establishment of a negotiating group which would be able to carry out its functions properly would require the co-operation of every member of the Committee. He trusted that all members of the Committee would use their usual good sense in trying to reach a decision on setting up the negotiating group.

The meeting rose at 6.45 p.m.

16th meeting

Wednesday, 21 August 1974, at 4.15 p.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Organization of work

1. The CHAIRMAN reported that, pursuant to the decision taken by the Committee at its 14th meeting to establish a negotiating group under the chairmanship of Mr. Pinto to negotiate on articles 1 to 21 on the basis of document A/CONF.62/C.1/L.3, with particular emphasis on article 9 and the conditions of exploration and exploitation, he had held intensive consultations with members of the Committee. There seemed to be general agreement that the group should be composed of 50 members, nine representatives from each of the five geographical groups, and one representative for each proposal submitted. If he heard no objection, he would take it that that was acceptable to the Committee.

It was so decided.

2. Miss MARTIN-SANE (France), speaking on behalf of the group of Western European and other States, said that the group interpreted the decision taken by the First Committee to set up a limited negotiation group, which would be limited in size but open to all, as meaning that all the members appointed would not speak on behalf of other members of their geographical group, and they would all be entitled to participate in the work of the group on an equal footing. That interpretation applied both during the current session and at any subsequent session of the Conference.

3. The CHAIRMAN said that the group would indeed be open-ended, and any interested delegation which was not a member of the group could participate in its work. If, however, there was a vote—although he sincerely hoped there would be no voting—only the 50 appointed members would be entitled to vote.

4. Mr. RAKOTOSIHANAKA (Madagascar), speaking on behalf of the African Group, said that it supported the establishment of an open-ended negotiating group in which all interested delegations could participate. The composition of the group should not, however, create a precedent for the composition of any other negotiating groups established in the future.

5. Mr. KASEMSRI (Thailand), speaking on behalf of the Asian Group, agreed that the negotiating group should be open-ended and that its composition should not create a precedent for the composition of any future working groups.

6. Mr. NAVARRETE AZURDIA (El Salvador), speaking on behalf of the Latin American countries, expressed support for a negotiating group with limited membership, but open for participation by all. The group should not be limited to the current session of the Conference, but other groups could also be established, and for the sake of continuity, it would be desirable to have a standing intersessional group to deal with article 9 and the conditions of exploration and exploitation.

7. Mr. WALDRON-RAMSEY (Barbados) said it was the view of his Government that the life of the negotiating group should not extend beyond the end of the current session of the Conference. If the Committee decided to establish a new negotiating group with a new mandate at the next session of the Conference, the Conference would then constitute such a group. His Government could not delegate to any group, the Latin American countries or the Group of 77, any power to negotiate on its behalf beyond the formulation of alternative B of draft article 9 and the text on basic conditions of exploration

and exploitation submitted by the Group of 77 (A/CONF.62/C.1/L.7). His delegation had submitted a text for article 8 and it alone was competent to negotiate it.

8. Mr. THOMPSON FLORES (Brazil) made some clarifications concerning the negotiating group. It was a subsidiary organ, under rule 50 of the rules of procedure, on which a certain number of countries would be represented and in which all members of the Committee could participate with full and equal rights. He could not conceive of any voting in the group; votes would be taken, as he understood it, only by the Committee or by the Conference itself. As for the terms of reference of the group, it would deal with articles 1 to 21, giving priority to article 9 and the basic conditions of exploitation in the area, and it would report to the Committee. However, the group might be unable to reach a consensus on every item referred to it and might therefore have to submit alternatives to the Committee which would then begin the decision-making process, and decide whether a vote was required. Negotiations would then commence at the highest level with a view to reaching a consensus in accordance with rule 37 of the rules of procedure.

9. With regard to the comment by the representative of Barbados, he said that it was his understanding that the group would cease to exist only when it had completed its mandate or if the Committee so decided.

10. The CHAIRMAN noted that under rule 55 (c) subsidiary bodies were entitled to vote. He assumed that the representative of Brazil had said there would be no voting in the group because every attempt would be made to reach decisions by consensus.

11. Mr. RATINER (United States of America) said that he fully agreed with all that the representative of Brazil had said, including his comments on voting. It was his understanding that the negotiating group being established was not a subsidiary organ in the sense of rule 55 (c) and that a negotiating group could not, by definition, vote.

12. Mr. PASTOR RIDRUEJO (Spain) said that his views on the negotiating group were similar to those of the representatives of Brazil and the United States of America. All representatives would have full and equal rights. He further agreed that the nature of a negotiating group excluded the possibility of voting.

13. Mr. WALDRON-RAMSEY (Barbados) requested the Chairman to rule on the status of the negotiating group in the light of the statements by the representatives of Brazil and the United States. He understood it to be a formal group, and believed that its mandate should end at the current session of the Conference. If it was a formal group and was to be extended for the duration of all sessions of the Conference, its mandate should be reviewed and procedures established for reporting to the Committee. He reiterated his delegation's preference for a formal negotiating group of the Committee as a whole, presided over by the Chairman of the Committee.

14. The CHAIRMAN said that he regretted having to disagree with the representative of the United States on his interpretation of the status of the negotiating group, but would personally rule that it was a subsidiary organ within the terms of the rules of procedure. He hoped however that, consistent with the spirit of the Conference and the rules of procedure, there would be no need for voting in the negotiating group. All decisions should be reached at best unanimously, failing that by consensus, and voting resorted to only where absolutely

necessary. As a sovereign body, the First Committee had the right to set up subsidiary organs and could terminate the mandate of the negotiating group at any time.

15. Mr. DE SOTO (Peru) said that his delegation shared the views of the Chairman. The Committee had the sovereign right to establish or abolish subsidiary organs and also to decide whether or not to apply various parts of the rules of procedure to the deliberations of those subsidiary organs. The Committee therefore could very well determine that rule 55 (c) would not apply to the deliberations of the negotiating group, although such a determination would be superfluous. There was no question of issues coming to a vote in that subsidiary organ, since it had not been created on the basis of the usual principle of equitable geographical representation. For example the representation of the Group of 77 within the negotiating group was not in proportion to their overwhelming number. The representative of Spain had specified that the task of the negotiating group would be to negotiate in the strict sense of the word. The decisions of the negotiating group could not be binding on any delegation unless they were formally accepted by the Committee.

16. With regard to the reservations expressed by the representative of Barbados, rule 52 of the rules of procedure recognized the right of any State that was not a member of a committee or subsidiary organ to explain its views to that body on any proposal that that State had made. Thus as a sponsor of amendments to article 8 the delegation of Barbados would have the opportunity to make a statement on that subject to the negotiating group.

17. With regard to the continuity of the mandate of the working group, his delegation supported the view of the representative of Brazil. Perhaps the representative of Barbados would be able to accept that same view if a minor modification were made, namely that if the negotiating group successfully completed all of the terms of its mandate at the present session, it would then cease to exist. Otherwise its mandate would be extended to include the next session of the Conference.

18. The CHAIRMAN said that in his opinion the Peruvian suggestion to exclude the possibility of a vote in the negotiating group would require an amendment to the rules of procedure. However, since in practice the essence of a negotiating group was to negotiate and not to make decisions, such complications could be avoided. It would be unnecessary for any delegation to invoke rule 52, since the negotiating group was open to the participation of any State, whether a formal member or not.

19. Mr. BENNOUNA (Morocco) said that a subsidiary organ as traditionally defined depended completely on its parent body which retained all its competences. It was therefore inconceivable that the negotiating group could make decisions which would be binding on the Committee as a whole, since the decisions of the Conference were to be reached by consensus and consensus logically required the participation of all States. Therefore, the Committee was the most appropriate forum for any vote.

20. The CHAIRMAN reassured delegations that no decision would be made before coming before the Committee for approval. It was conceivable that the 50 members of the negotiating group might reach conclusions and make recommendations which would ultimately be rejected by the approximately one hundred other members of the Committee. For that reason the members of the negotiating group would be encouraged to keep in contact with their geographical groups and other groupings to ensure that the negotiating group would not stray too far from the general orientation of the Committee.

21. Mr. OGOLA (Uganda) said that the term "negotiating group" itself caused some difficulties for his delegation. He had come to Caracas as a plenipotentiary to negotiate for his country and could not accept a situation in which any organ would negotiate on his behalf. Perhaps the intention in creating

the negotiating group had been to set up a consultative or exploratory body which would report the results of its proceedings to the Committee.

22. As presently constituted, the negotiating group could not pretend to negotiate for the entire Committee since its membership did not reflect equitable geographical distribution. His delegation feared that the real intention in establishing the negotiating group was to postpone genuine negotiations.

23. The CHAIRMAN suggested that perhaps it would be more appropriate to call the subsidiary organ which the Committee had created a "working group". He appealed to members of the Committee to allow a few days for the working group to demonstrate its character and he was personally convinced that the apprehensions which had been expressed would soon be allayed.

24. Mr. BARNES (Liberia) said that the question of the duration of the negotiating group's mandate was uppermost in his own mind, since it was possible that after the close of the current session, Governments might reconsider or alter their positions. Therefore a time-limit should be imposed on the mandate of the negotiating group. He also wondered, in view of the little time remaining, when the negotiating group would be able to report to the Committee as a whole. The terms of reference of the negotiating group should specifically require that it report to the Committee before any decisions were taken. Each delegation was responsible to its Government and no delegation could presume to negotiate for any other. It was therefore important to emphasize that participation in the negotiating group would be open to members and non-members alike.

25. Mr. TUNCEL (Turkey) said that his delegation had come to Caracas with a responsibility to represent its Government in a diplomatic conference. Consequently it could not delegate its political responsibility to any organ whatsoever in which it did not have the right to participate on an equal footing. Nevertheless his delegation had no objection to the creation of the working group since the Committee had the right to take steps to facilitate its work.

26. It was necessary to specify the duration of the working group's mandate. The representative of Brazil had proposed that it should meet until the end of the present session and resume work at the beginning of the next. His delegation could agree with that proposal if it were understood that the group would not meet between sessions of the Conference, since such intersessional meetings would make the participation of non-members difficult and would consequently detract from the political responsibility of the States not participating in the meetings.

27. There should be no voting in the working group since non-members, while eligible to participate in its work, would not, as the Chairman had explained, have the right to vote. Decisions could be made only in the plenary of the Committee.

28. His delegation would support any measures aimed at advancing the work of the Committee which were compatible with the fundamental political responsibility all delegations had to their Governments.

29. Miss MARTIN-SANE (France) agreed with the description of a subsidiary organ given by the representative of Morocco and emphasized that it was her understanding that, in keeping with the general philosophy of the Conference, there would be no voting in the working group. No effort should be spared to reach a consensus in such a group. If it was unable to reach agreement, the group would have to appeal to the Chairman of the Committee who, when he deemed it appropriate, would put the matter before the Committee after holding the necessary consultations.

30. Mr. THOMPSON FLORES (Brazil) agreed with the view expressed by the representative of Morocco that the powers of the group were limited to those conferred on it by the

Committee. He proposed that the Committee should recommend that the negotiating group should not vote; that it should decide that the negotiating group would exist during the time it took to complete the mandate entrusted to it by the Committee; and that the group should meet only during sessions of the Conference. Referring to the concern expressed by the representatives of Turkey and Barbados with regard to the delegation of power and the remarks by the representatives of Uganda and Peru concerning equitable regional representation, he said that the group was open-ended and that any member of the Committee could participate in its discussions on an equal footing at any time. Furthermore, the group would only report on its work; decisions would be taken only in the Committee. As the Group of 77 had adopted a common position on articles 1-21, his delegation could agree that the Group be represented in the negotiating group by one of its members.

31. The CHAIRMAN said that the Committee reserved the right to fix the duration of the negotiating group.

32. Mr. RATINER (United States of America) asked whether it would be possible to take a decision separately on each item of the proposal submitted by the representative of Brazil.

33. Mr. WALDRON-RAMSEY (Barbados) agreed with the views expressed by the representative of Peru and the Chairman with regard to voting. It was the general understanding of the Conference that, as far as possible, agreement should be reached within the context of the gentleman's agreement. That view should be extended to apply also to all its subsidiary organs. There was therefore no need for the Committee to recommend that the negotiating group should not vote. His delegation had consistently maintained that the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction should be governed by the rules of procedure of the General Assembly though it should endeavour to accomplish its work without recourse to voting.

34. If the group was to have the extensive mandate proposed by the representative of Brazil, it would have to work indefinitely. His delegation was prepared to agree that each session could decide to set up instances but it would invite a vote on the extent of the mandate and the duration of the working group.

35. The CHAIRMAN asked whether a general understanding that there would be no voting in the group would not reflect the wishes of the Committee. Would the representatives of Barbados and Brazil accept that the negotiating group would exist as long as the Committee considered necessary for the completion of its mandate? The Committee could ask the Chairman of the working group for a preliminary report before the end of the current session or it could adopt sea-bed Committee procedure and ask for a report within five days of the opening of the next session. The group would meet only during sessions of the Conference but that would not prevent individual delegations from making efforts to reach agreement between sessions.

36. Mr. DE SOTO (Peru) said that it should be clearly understood that the group was being established under rule 50 of the rules of procedure in order to ensure permanent contact with the Committee through the Chairman of the Committee. However, the question of the mandate and constitution of the group should not be raised each time it presented a report.

37. Mr. VANDERPUE (Ghana) requested the Chairman to clarify his statement that the group would meet only during sessions but that that did not preclude the possibility of intersessional meetings of delegations.

38. The CHAIRMAN said that the group should not meet as a group between sessions but that the possibility of meetings between interested groups to consider outstanding problems could not be excluded.

39. Mr. OGOLA (Uganda) requested clarification on the constitutional position of the Chairman of the working group, his role in relation to the Chairman of the Committee and the system of checks and balances to be applied to the working group.

40. The CHAIRMAN said that the Committee was the supreme organ and that any body established was a subsidiary organ. The working group would submit periodic reports to the Committee.

41. Mr. KO Tsai-shuo (China) agreed with the basic spirit of the Brazilian proposal. However, the Committee should pay special attention to the views expressed by various delegations and particularly those of the representatives of Turkey and Uganda. The group should be regarded as a subsidiary organ of the Committee established for the purpose of facilitating the work of the Committee. Obviously, such a group was not entitled to make independent decisions and should submit reports only to the Committee. The Committee alone could take final decisions. The working group should perform the specific functions assigned to it by the Committee and its mandate should be terminated when it had fulfilled that function.

42. The composition of the group did not conform to the principle of equitable geographical distribution. However, having noted the statements of various delegations and the views expressed by the representative of Brazil, his delegation was prepared to accept the proposed composition in view of the special circumstances, though he wished to state clearly that the composition of the working group should not be regarded as a precedent.

43. Mr. RATINER (United States of America) supported the proposal by the representative of Brazil that the negotiating group should not vote and that it should exist during the time it took to fulfil the mandate entrusted to it by the Committee. The question of intersessional meetings had been raised in the General Committee. He wondered, therefore, whether the Committee might defer consideration of the proposal that the working group should not meet between sessions until the General Committee had discussed that item. A decision taken in one committee was a persuasive factor and could affect the work of other committees. However, he would not stand in the way of the consensus at the current meeting.

44. The CHAIRMAN said that the discussions in the General Committee were concerned with meetings at a much higher level. He invited the Committee to accept his previous interpretation of the proposals concerning the working group. He would request the Chairman of the group to ensure that it commenced its work immediately and to present a report to the Committee before the end of the current session.

45. The proposed composition of the working group was as follows: representing the African group: Algeria, Egypt, Ghana, Lesotho, Madagascar,¹ Mali, Morocco, Nigeria and Tanzania; representing the Asian group: Afghanistan alternating with Nepal, China, India, Iran, Kuwait, Pakistan, Philippines alternating with Indonesia, Singapore and Yugoslavia; representing the group of Latin American countries: Bolivia, Brazil, Chile, Honduras, Jamaica, Mexico, Peru, Trinidad and Tobago, and Venezuela; representing the Western European group and others: Austria, Canada, Federal Republic of Germany, Italy, Netherlands, Norway, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland; representing the Eastern European group: the Byelorussian Soviet Socialist Republic, Czechoslovakia, the German Democratic Republic, Hungary, Bulgaria, Poland, Romania, the Ukrainian Soviet Socialist Republic, and the Union of Soviet Socialist Republics; representatives for proposals: Australia, Japan, United States of America, Colombia as representative

¹ At the 17th meeting it was announced that Zaire would replace Madagascar.

for the proposals by the Group of 77 and France for the Eight-Power proposals.

46. If he saw no objection he would take it that the list was acceptable to the Committee.

It was so decided.

47. Mr. ZEGERS (Chile) requested the Secretariat to prepare a study in co-operation with the United Nations Conference on Trade and Development on the economic implications of sea-bed mining in accordance with the provisions of General Assembly resolution 2750 A (XXV) before the next session of the Conference. That study should examine three basic aspects of the question: the updating of the description of activities being carried out in the area with particular emphasis on nodule mining; further analysis of possible solutions to minimize the adverse economic effects of sea-bed mining, taking into account the solutions or alternative methods proposed in the reports by the Secretary-General and the United Nations Conference on Trade and Development, the debates in the Committee and the summaries by the Chairman of the Committee; consideration of possible measures to be adopted by the Authority to minimize such adverse effects and related powers.

48. Mr. RATINER (United States of America) said that the precise terms of reference of such a study should be discussed in the Committee. The question of the economic implication of sea-bed mining had already been considered and his delegation had detected a shifting of views on the subject in the course of the discussions. He wondered whether there should be an updating of the study or whether, in presenting the report in document A/CONF.62/25, the Secretary-General had not completed the mandate entrusted to him under General As-

sembly resolution 2750 (XXV). His delegation would like to ensure that such a study presented a properly balanced view. He would like to have an opportunity to consider the suggestion by the representative of Chile and to state his views at a future meeting of the Committee.

49. Mr. IMAM (Kuwait) said that when his delegation had submitted the draft resolution to the First Committee of the General Assembly requesting a study of the adverse effects of sea-bed mining on land-based production, it had asked for periodic reports on the subject. The representative of Chile had not asked for a new study, he had merely requested the Secretariat to take note of his request in order to ensure that future reports were as pertinent and comprehensive as possible and took account of all relevant proposals.

50. Miss MARTIN-SANE (France) said that before stating its opinion, her delegation wished to know whether the matter under discussion was the position of the Chilean delegation, or whether the latter wished the Committee itself to take a decision. In the second case, she wished to reserve her delegation's position.

51. The CHAIRMAN said that all delegations had the right to request the Secretariat to take note of items which they would like to see included in its report. Two delegations had requested the Secretariat to provide an updating of the economic implications of sea-bed mining in time for the next session of the Conference. The representative of the United States could take the floor at future meetings of the Committee to request the inclusion of additional material or to ensure that certain matters were discussed.

The meeting rose at 6.50 p.m.

17th meeting

Tuesday, 27 August 1974, at 3.30 p.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Statement by the Secretary of the Committee

1. Mr. LEVY recalled that at the previous meeting the representative of Chile had referred to General Assembly resolution 2750 A (XXV) and had requested the Secretariat to pursue the study of the economic implications of the exploitation of sea-bed resources mentioned therein. The resolution requested the Secretary-General to identify the problems arising from the production of certain minerals from the area beyond the limits of national jurisdiction, to propose effective measures for dealing with those problems, and to keep the matter under constant review so as to submit supplementary information annually or whenever it was necessary and recommend additional measures in the light of economic, scientific and technological developments, in co-operation with the United Nations Conference on Trade and Development, specialized agencies and other competent organizations of the United Nations system. In accordance with the provisions of that resolution, the Secretariat hoped to be able to submit at the next session a short study supplementing the study submitted as document A/CONF.62/25, which it would, essentially, update, taking into account the discussion in the Committee. In that connexion, he appealed to all Governments, official bodies and intergovernmental institutions to provide the Secretariat with all the necessary information so that the Secretariat would not need to have recourse to articles or press cuttings which were not always accurate.

Report of the Chairman of the Working Group

2. Mr. PINTO (Sri Lanka) recalled that at its 14th meeting on 19 August 1974 the Committee had established a Working Group charged with the responsibility of pursuing negotiations on draft articles 1-21 as contained in document A/CONF.62/C.1/L.3, with special emphasis on draft article 9 as well as on "conditions of exploration and exploitation". The Working Group had met for the first time on 21 August 1974 and had since then held six meetings. In order to enable the Chairman of the Committee to report at the appropriate time to the plenary meeting of the Conference on the work of the Committee, it had been decided that the Working Group should not hold any more meetings at the current session and that he should report at the current meeting to the Committee on what had taken place thus far.

3. In the course of a discussion on its methods of work, several delegations had supported the view that the Working Group should immediately take up draft article 9 and the conditions of exploration and exploitation, while some other representatives had felt that more progress could be made if the Working Group were to deal with the other draft articles, with regard to some of which there seemed to be some prospect of an early reconciliation of views. It had eventually been agreed that the Group should concentrate on draft article 9 and the conditions of exploration and exploitation, since that would accord more with its terms of reference, as approved by the Committee, which laid emphasis on that subject. It had also

been agreed that the most practical way to proceed would be to begin discussing draft article 9. It had been felt that in due course a point would be reached when it would be appropriate to discuss the conditions of exploration and exploitation, at which time the Group would undertake consideration of that subject.

4. With regard to the conduct of negotiations on draft article 9, it had been agreed that account should be taken of the concerns of all delegations and that that principle ought to be given natural and just expression. Consequently, delegations would be free to address themselves to any of the four versions of draft article 9 of document A/CONF.62/C.1/L.3, it being understood that all four alternative versions had equal status before the Group. In discussing one alternative, however, any delegation would have the right to invoke the essential elements of any other alternative when necessary. In the event, the discussion had centred around alternative B, the text submitted by the Group of 77. Under the procedure delegations could make, in regard to alternative (B), tentative observations not necessarily representing their final views, but designed to elicit certain clarifications of substance that would indicate where there might be common ground.

5. He felt it was essential to respect the privacy of the negotiations that had taken place and to protect the frankness, cordiality and trust of the members of the Working Group who had participated in those discussions. That was why he was restricting himself to outlining in his report the very considerable number of issues of substance that had been probed and analysed in the search for solutions acceptable to all, and also why he would not refer to the anonymous working papers submitted to the Group to facilitate its work.

6. Of the principal matters discussed, mention should be made first of the question of who could explore and exploit the area. Both paragraphs of alternative B of draft article 9 were relevant to that issue. The first paragraph empowered and required the Authority to conduct directly all activities of exploration and exploitation and other related activities, including those of scientific research, in other words, the Authority was itself required to explore and exploit the area, using finance, technology and other resources acquired by it for that purpose. The second paragraph conferred on the Authority discretionary powers to utilize "juridical or natural persons" in the conduct of the activities contemplated. That might be viewed as a preliminary phase of the Authority's existence when, having yet to acquire the means to explore and exploit the area, it contracted with others to discharge some of its functions and responsibilities. It was necessary to stress the integral nature of a concept that was fundamental to both paragraphs of alternative B since some of the obstacles to agreement on the provisions of the second paragraph could be comprehended and assessed only in the light of the basic concept of the Authority as the sole representative of mankind for carrying out exploration and exploitation in the area.

7. While maintaining an awareness of that fundamental concept, the Group had decided to focus its attention for the time being on the second paragraph of alternative B.

8. As he had said, the second paragraph referred to "juridical or natural persons" as possible instruments of the Authority for exploration and exploitation activities. There was no specific mention of States or State enterprises for that purpose. The supporters of alternative B had frequently and categorically stated that the phrase "juridical or natural persons" was also intended to include States and State enterprises. However, States in which the juridical concept of the private company had been rejected and was no longer known, and where the concept of juridical personality might differ from that in other States, might be apprehensive regarding the reference to "juridical or natural persons"—which could, in that unqualified form, be interpreted not merely as excluding States and State enterprises, but also as discriminating against them in favour of

private companies, since the latter immediately came to mind when reference was made to the "juridical persons" familiar under the law of States with a different social and economic system. Specific reference to "States" and possibly to "State enterprises" would be necessary in the second paragraph of alternative B if such apprehensions were to be allayed.

9. It had been noted that alternative B of draft article 9, as currently worded, made no mention of States as such. Should it be decided, in order to meet the concerns of some countries, to make specific mention of a right of participation of States in exploration and exploitation activities, it would be necessary to consider whether that right should be conferred only on States parties to the convention—the "Contracting Parties"—or simply on "States", whether or not they were parties to the convention. Some held the view that, since the resources of the area were the common heritage of mankind, all States, whether or not parties to the convention, should have the right to participate in exploration and exploitation, provided they undertook to accept the Authority's conditions. On the other hand, it might be said that the right of participation should be available only to those who were legally bound by the convention and had accepted in full the obligations and responsibilities flowing from it.

10. Another issue arising in that connexion was how, if at all, compliance with the terms and conditions of the convention by States that were not parties to it might be secured. Under the general rule in article 34 of the Vienna Convention on the Law of Treaties, a treaty did not create either obligations or rights for a third State without its consent. However, article 36 of that Convention provided that a right might arise for third States under a treaty in certain specified circumstances, and required that a third State exercising such a right should comply with the conditions for its exercise provided for in the treaty or established in conformity with it. It might be said that strict compliance with the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, which appeared in General Assembly resolution 2749 (XXV), would have the effect of bringing into being "an international treaty of a universal character generally agreed upon", so that there would be no States that were not parties to it, and that problem would not arise. On the other hand, if some States—and particularly those possessing the technical and financial capacity to explore and exploit the area—did not, in fact, become parties to the convention, choosing to remain outside the régime established by it, some might feel that the common heritage concept was not adequately observed unless a means could be found to ensure that States not parties complied with at least certain basic duties and responsibilities imposed by the convention.

11. A different problem, but one associated with the idea of State participation, might be mentioned, namely, whether a State that had entered into contractual arrangements with the Authority would, in the event of breach by that State of its obligations, be entitled to have recourse to its traditional jurisdictional immunities. While the matter had still to be explored in detail, it might be useful to bear in mind the possibility of reflecting in the results of the Conference's work the principle that a State could not in those circumstances invoke its traditional immunities, particularly in a case where a dispute had been adjudicated by a tribunal with appropriate jurisdiction.

12. A second issue of importance that would need to be resolved—the extent of the discretionary power of the Authority and the limits that should be imposed on it by the convention—had given rise to a whole series of problems. The mineral wealth of the sea-bed was the common heritage of mankind and that wealth and the benefits to be derived from it must be available and accessible to all. It might be argued that, while alternative B of draft article 9 contained no actual restriction on access to the minerals of the area, the comprehensive powers conferred on the Authority, and the fact that its

power to utilize juridical or natural persons in exploration and exploitation activities was discretionary and permissive, rather than mandatory—as reflected in the opening phrase of paragraph 2, “The Authority may . . . confer certain tasks”—produced uncertainty and lack of confidence in the minds of those to whom access to sea-bed minerals was vitally necessary for economic growth and stability.

13. It might be necessary to allay those apprehensions by including provisions that would demonstrate beyond a doubt that the Authority would in fact be required to explore and exploit the area in accordance with the convention, in other words that there would be no possibility of inaction on its part. The clear injunction in paragraph 5 of the Declaration of Principles required that the area should be open to use by all States without discrimination. In that connexion it could be suggested that the opening phrase of paragraph 2 might be changed from “The Authority may . . .” to “The Authority shall . . .”. It might also be thought desirable to demonstrate beyond doubt that in the Authority, States were not creating an entity endowed with a wide range of discretionary powers comparable to that of a sovereign State. The inclusion in the convention of certain basic conditions that would limit or orient the discretionary powers of the Authority would be welcome to some States, and a reference to such basic conditions might appear in paragraph 2 of draft article 9 as well.

14. Alternative B of draft article 9 covered other areas where the wide discretion of the Authority had given rise to uncertainty and to possibly excessive caution. Thus, in addition to the Authority’s implied discretion as to whether or not to explore and exploit the area, it was also given discretion to decide what “tasks”, if any, might be assigned to other entities, and a choice of the legal devices by which the Authority could enter into a relationship with one or more of such entities. As to the “tasks” contemplated, those were listed in paragraph 5 of the basic conditions as set forth in the Committee’s document A/CONF.62/C.1/L.7. It would be within the discretion of the Authority to assign one or more such tasks to contractors. In exercising that discretion, the Authority might be expected to pay due regard to considerations of efficiency and financial viability; but it might assist the negotiations if some assurance of that were to appear, perhaps among the basic conditions of exploitation.

15. The Authority’s discretion in the selection of legal devices by which to establish a relationship with the entity of its choice might be regarded as already circumscribed by the reference in paragraph 2 of variant B, “. . . service contracts, or association or through any other means . . .”. It seemed clear that the drafters had not intended there to give an unfettered discretion to the Authority. The range of devices opened to use by the Authority was limited, it would seem, by the *ejusdem generis* rule: only contractual arrangements could be entered into. As the list of legal devices mentioned was not exhaustive, and perhaps did not need to be, it might be considered whether a reference there to “appropriate contractual arrangements” would not offer flexibility and brevity, while remaining within the limitation to the contractual devices contemplated by the drafters, and excluding other types of legal arrangements which they regarded as unacceptable in that context.

16. Again, there was the discretionary power of the Authority to select entities to which it would assign tasks and with which it would enter into contractual arrangements for their performance. As he had noted in another context, the Authority was empowered to choose from among “juridical or natural persons”, a phrase which had time and time again been interpreted by its drafters as clearly including States, as being persons under international law, and State enterprises, as being juridical persons under the domestic law of the State of their incorporation or registration. However, there were States under whose social and economic system the private company was no longer known, and which might regard the phrase “juridical or

natural persons” as unduly restrictive and inadequate to cover their concept of the State enterprise. It would seem necessary to accommodate those views and to consider the possibility of distinctions of a social, economic and legal character that might be made between private companies, on the one hand, and State enterprises, on the other, in the treatment accorded to each in dealing with the Authority. Under alternative B of draft article 9, read together with subparagraph 6 (b) of the associated basic conditions, selection of partners by the Authority must be “on a competitive basis”; that foreshadowed a non-discriminatory screening system but stopped short of an explicit statement to that effect. It might be necessary to consider more detailed treatment that would make explicit the non-discriminatory nature of the system of selection. In doing so, due account would have to be taken of the view of the drafters of alternative B that reference to criteria aimed at the redressing of social and economic imbalances—such as that reflected in subparagraph 6 (b) of the basic conditions, on the need for direct participation by the developing countries—would not be treated as “discriminatory” in that sense.

17. Finally, mention might be made of the possibility of limiting the Authority’s discretion in two other ways: first, by requiring that contracts be awarded to entities within a State only upon the concurrence of that State and, secondly, by specifying the maximum number of contracts that might be awarded to a single State or to entities within that State. Further negotiations would be required before the positions of States became clear on those matters.

18. A third issue, the last to which he would refer, had to do with the exercise of control by the Authority over the entity with which it had contracted to carry out one or more specific tasks. Alternative B, paragraph 2, of draft article 9 required that the terms of the contracts entered into by the Authority should ensure its direct and effective control at all times over the activities covered. According to one view, control over the affairs of a private company could all too easily degenerate into interference, with a corresponding reduction of efficiency and serious danger to viability. Even if the idea that the Authority would exercise “direct and effective control” were to be within the accepted range of ideas, its further elaboration would be necessary. Paragraph 4 of the basic conditions did no more than add the idea that such control would be exercised “through appropriate institutional arrangements”. While that addition seemed to contemplate a stable and equitable system of control, the elements of which would be known to prospective contractors beforehand, it would assist the negotiations if further light could be thrown on the details of the proposed system. The modalities of the exercise of control would be important to discuss. Would it, for example, satisfy the concept of “direct” control if the Authority were to delegate its own responsibility to maintain control to the State of which its partner entity was a national? To what extent would regular visits and inspections be part of the system? Would it not be reasonable to contemplate separate modalities of control for States, on the one hand, and the other entities on the other, in recognition of the fundamental differences that clearly existed between States and private companies?

19. His report had perhaps been more diffuse and vague than usual. That was the result of the difficulty which he had had in reconciling two separate objectives that he had had in mind, namely, to outline for the Committee certain principal issues of substance with respect to which negotiations were taking place and, at the same time, to protect the privacy of those negotiations and scrupulously to avoid any implication that proposals had been made or positions taken which might retard frankness in the future. In his opinion, a good deal of progress had been made and a sound foundation laid for further work.

20. He had already indicated that the negotiations had in fact centred around alternative B of draft article 9, submitted to the First Committee with the support of the Group of 77, and

also, to some extent, around the basic conditions in document A/CONF.62/C.1/L.7, supported by the Group of 77 and other States. He had naturally had to concentrate in his report on the various ideas that had emerged in the course of negotiations and which, if accepted, could result in amendment of the present text. The fact that many ideas had been put forward and noted in his report in no way detracted from the importance of the basic texts of the Group of 77 and did not imply any reduction of the support they now enjoyed.

21. He paid a tribute to all those whose efforts had made possible the informal meetings of the Committee and the meetings of the Working Group and to the Chairman of the Committee whose patience, wisdom and diplomacy had greatly contributed to the progress achieved during the session.

22. Mr. RAO (India) said that the work of the First Committee gave cause for both satisfaction and dissatisfaction: dissatisfaction because it had not been able to reach agreement on the major issues before it, especially as there was only one session left to finalize the text of the convention, and satisfaction because the crucial issues concerning the régime of the international area had been identified and the opposing points of view considered with all the attention they had deserved.

23. The concept of the common heritage of mankind was not only a conventional norm but a peremptory norm of international law from which no derogation was permitted. One of its corollaries was that no State or person, natural or juridical, could appropriate the area or its resources or, consequently, act unilaterally in the area. The essential principles of the convention should be in consonance with that basic norm.

24. The Committee had studied and analysed in detail two main issues, namely, the system of exploration and exploitation, and the conditions of exploration and exploitation. The most significant development at the current session had been the submission of proposals by the Group of 77 on those two issues—proposals which had been supported by over 110 delegations. They were a realistic compromise designed to advance the work of the Committee and facilitate general agreement. The specific proposal on the system of exploitation was set forth in alternative B of article 9 (A/CONF.62/C.1/L.3). The concept of the role of the Authority in that proposal was completely different from that in the proposals submitted by the industrialized countries. The United States proposal (A/CONF.62/C.1/L.6), the Eight-Power text (A/CONF.62/C.1/L.8) and the Japanese text (A/CONF.62/C.1/L.9) provided that the Authority would have only regulatory powers, whereas under the Group of 77 proposal (A/CONF.62/C.1/L.7) the Authority would be a strong international body with comprehensive powers in the area.

25. His delegation did not feel it would be useful to elaborate on the so-called conditions of exploration and exploitation in the draft convention since that task ought to be left for the Authority itself. The Group of 77, however, in a spirit of compromise and wishing to meet the concerns of the technologically advanced countries, had submitted a comprehensive proposal on that question: while it provided that, as a necessary corollary of the principle of the common heritage of mankind, the title to the area and its resources would be vested in the Authority on behalf of mankind as a whole, it also provided for a number of guarantees for the exploiter. It was to be hoped that the gesture of the developing countries would not be in vain.

26. Mr. PALACIOS (Bolivia) said that the group of land-locked and other geographically disadvantaged countries had submitted to the Working Group a new text for article 7, paragraph 2. The text read as follows:

“Participation of land-locked and other geographically disadvantaged States in the exploration of the area and the exploitation of its resources shall be promoted and protected, having due regard to the special needs and interests of

these States, in order to overcome the adverse effects of their disadvantaged geographical location on their economy and development.”

27. That text had been adopted by consensus by the Group to replace the wording proposed by the representative of Singapore. The intention was to ensure that the exploration of the area and exploitation of its resources would be conducted in accordance with the principles of equality and justice, which was why it was essential to take account of the special difficulties faced by the land-locked and other geographically disadvantaged States.

28. The CHAIRMAN said that, if he heard no objections, he would take it that the Committee agreed to replace the text of article 7, paragraph 2, as set forth in document A/CONF.62/C.1/L.3, by the text just proposed by the representative of Bolivia.

It was so decided.

29. The CHAIRMAN said that, if there were no objections, he would consider that the Committee had decided to include *in extenso* the statement made by the Chairman of the Working Group in the summary record of the meeting.

It was so decided.

Consideration of the statement of activities of the Committee (A/CONF.62/C.1/L.10)

30. Mr. MOTT (Australia), Rapporteur, thanked the delegations that had communicated to him their comments on the draft text which he had distributed. Those comments had enabled him to prepare the statement which was now being submitted officially to the Committee.

31. Several changes needed to be embodied in the text.

32. First, in the fourth paragraph of section IV the text should state that two working papers had been tabled on the subject of the economic effects of deep sea-bed exploitation, and the missing symbol (A/CONF.62/C.1/L.11) should be added.

33. Secondly, the following phrase should replace that appearing between square brackets in the sixth paragraph of the same section: “Following reference to General Assembly resolution 2750 A (XXV) and a request by one delegation, the Secretariat informed the Committee that, in accordance with that resolution, it would prepare a brief and concise follow-up study to the previous report (A/CONF.62/25) on the economic implications of sea-bed mining, taking into account the discussions that had taken place during this session of the Conference, for presentation at the next session of the Conference.”

34. Thirdly, the seventh paragraph should state that four documents had been tabled and introduced on the subject of conditions of exploration and exploitation, and the missing symbol (A/CONF.62/C.1/L.9) should be added.

35. Fourthly, since Zaire had replaced Madagascar among the representatives of the African group of countries in the working group, the list of members of that group should be modified accordingly.

36. Finally, the Rapporteur would read out later the phrase that would complete section VI of the statement. Furthermore, the document would include two annexes which would likewise be added at a later stage.

37. Mr. WARIOBA (United Republic of Tanzania) said that his delegation, like the Indian delegation, was experiencing mixed feelings at the conclusion of the second session of the Third United Nations Conference on the Law of the Sea. Admittedly, it had entertained no great hopes that the session would lead to the signature of a convention, but it had nevertheless expected much greater results than had actually been achieved. It could not, however, be denied that considerable progress had been made, to which the First Committee had contributed not a little.

38. He wished to make some remarks of a general nature on the statement of activities of the First Committee, which would apply equally to the statements that would be submitted by the other Committees. He regretted that his delegation had not been given an opportunity of making its views known before a decision on the statement had been taken at a plenary meeting. He had been unable to attend that meeting, having been informed too late that it was being held. In those circumstances, it was only with feelings of the greatest hesitation that he accepted the statement submitted, in view of the reservations which he wished to set forth regarding its nature.

39. It had been decided that the Committee would confine itself to submitting a statement of facts for the record and for purposes of information. Yet if one considered document A/CONF.62/C.1/L.10, it was legitimate to ask what was its real usefulness. It dealt, in the main, with the structure of the Committee, its terms of reference and the documentation that it had used. If that information was intended for the Committee, it was clearly useless, and if it was intended for the Governments represented at the Conference or for the public, it obviously failed in its aim, since what the Governments and the public expected was information about the work of the session. On that point, the statement was completely inadequate. Mention was made of the summary of discussions given by the Chairman, presented as reflecting personal opinions and committing no delegation. Yet if it was desired to ensure that the Caracas Conference would not be considered a failure, it was, on the contrary, important to give an account of the positions taken by the delegations, which actually represented the results of the Committee's work. The statement should therefore have reflected the trends that had emerged, as they found expression, for instance, in the statements made by the Chairman of the Group of 77, and should not have been confined to mentioning the statements made by the Chairman of the Committee and the Chairman of the Working Group, which were not binding on delegations.

40. On the other hand, where reference was made to documents A/CONF.62/C.1/L.6 to 8, which dealt with the vitally important question of conditions of exploration and exploitation, they were dismissed in a single line without the slightest mention of the work which had led to their preparation.

41. In the statement, emphasis was placed mainly on questions connected with the organization of work. For example, the last paragraph of section IV dealt with the establishment and functioning of the Working Group and, in that connexion, reference was made to the summary records of the 14th, 15th and 16th meetings of the Committee. It would thus appear that the Committee attached particular importance to that question. Yet it was actually a mere question of procedure, on which there had been general agreement that it should be considered as of secondary importance in comparison with the detailed discussions and persevering negotiations that had taken place within the Committee. However, since it had been deemed appropriate to stress that point, his delegation wished to express the most serious reservations with regard to the last phrase of the paragraph, for the summary records cited as references did not constitute an adequate and balanced source of information. In particular, in the record of the 15th meeting, where reference was made to the possible reopening of the issue of the decision taken to set up a negotiating group, the statement made by representatives favourable to that possible course had been fully summarized, whereas the purpose of certain delegations—which had nevertheless explained their positions on that point at length—to reject it, were passed over in complete silence. His delegation considered that it was not an issue of primary importance and, in fact, it did not see that the final paragraph of section IV was essential, and suggested that it should simply be deleted in order to avoid the recording of unduly incomplete information.

42. He considered that the statement of activities in no way reflected the work that had been accomplished at Caracas, and that it left the false impression that the Conference was ending in failure. He would have preferred an objective assessment of the work of the Committee to the existing statement of activities.

43. The CHAIRMAN observed that the question of the nature and content of the document in question had been examined at length and had been discussed in the General Committee of the Conference. Whatever the individual views of delegations might be, the General Committee and the plenary of the Conference itself had decided to prepare the statement in the form presented. Therefore it was now a matter to be considered by the Conference in a plenary meeting. The Rapporteur would note the suggestions made by the Tanzanian representative and would transmit them to the Rapporteur-General.

44. He agreed that perhaps the last paragraph of section IV of the statement was not essential, and suggested that it should be deleted.

45. Mr. ZEGERS (Chile) shared the view of the Tanzanian representative with regard to the formula adopted for the report on the Committee's work. His delegation had, however, bowed to the decision which had been taken officially and which could not now be rejected.

46. Mr. KASEMSRI (Thailand) agreed that it would be desirable to delete the last paragraph of section IV. However, if that was done, specific mention should also be made in that document of the fact that the composition of the Working Group should not constitute a precedent for the composition of any similar bodies that might be set up in the future.

47. Mr. VANDERPUYE (Ghana) was strongly opposed to the idea of not mentioning the summary records. In view of the form in which the statement of activities appeared, there should be available a further source of information on the Committee's work.

48. The CHAIRMAN said that no decision had yet been taken in that regard. Moreover, the statements presented by the Rapporteur of the Committee to the Rapporteur-General were not binding on the Committee, and he felt it was useless to revert to a point which had already been discussed at length. Any criticism of the Rapporteur's statement should be made in a plenary meeting.

49. Mr. DE SOTO (Peru) shared the opinion of the Tanzanian representative concerning the substance of the statement, and agreed that it was essential to reflect the various trends of the discussions.

50. However, it had finally been decided that the Rapporteur would be asked to confine himself to submitting a factual statement. The Rapporteur had done his best, considering that he had been given little latitude. The decision on the nature of the statement of activities might be regrettable, but it could not be reversed now. Moreover, the Chairman had pointed out that the statement was not binding on the Committee. However, the language used, particularly in section VII which stated that the Committee "recommends", gave rise to some doubts in that connexion. Perhaps the wording should be amended to make it quite clear that the Committee was not bound by the statement.

51. The CHAIRMAN said that the Committee could not in any case be bound since it had taken no decision. Having held discussions with the Peruvian representative and the Rapporteur, he felt that it was not essential to make any changes.

52. Mr. MOTT (Australia), Rapporteur, read out the following text which he had prepared for Section VI of the statement of activities of the Committee:

"At the 17th meeting, the Chairman of the working group gave a preliminary report to the Committee on the work done in the Group, which related to draft article 9 of the

articles relating to the principles of the régime. By decision of the Committee, this statement appears *in extenso* in the record of that meeting. His report contained personal views and was not binding on any delegation. A delegation commented on the statement of the Chairman of the working group and its remarks are summarized in the record of the session."

53. Mr. RATINER (United States of America) said that he thought it would be more correct to speak of the terms of reference of the Working Group and not merely of consideration of article 9, which constituted only a part of those terms of reference.

54. The CHAIRMAN said that, if there were no objections, he would take it that the Committee had decided to take note of the statement of activities (A/CONF.62/C.1/L.10), with the amendments proposed.

It was so decided.

55. Mr. HASSOUNA (Egypt) said that in the view of his delegation, one of the main features of the current session of the Committee was the constructive role played by the Group of 77, which was not to be wondered at since the developing countries had always defended the concept of the common heritage of mankind adopted by the General Assembly at its twenty-fifth session. Conscious of the fact that article 9 was the corner-stone of the future régime for the international area, the Group of 77 had submitted a new draft article to replace the two alternatives which members of the Group had submitted to the sea-bed Committee. That draft article was based on the fundamental principle that all sea-bed operations should be conducted directly by the Authority, which might enter into contractual arrangements with natural or juridical persons while retaining continuing effective control. In spite of the views which had been expressed to the contrary, objective evaluation of the draft article showed that it had been formulated in a spirit of compromise: in addition to the initial proposals by the Group, it contained an element of flexibility in the form of provisions enabling the Authority to enter into contractual arrangements with third parties. However, the proposal had not satisfied the developed countries, which had insisted that the basic conditions of exploration and exploitation should be considered at the same time. The Group of 77 had acceded to that demand and had submitted comprehensive proposals on the subject.

56. A desirable feature of all the proposals of the Group of 77, whether on article 9 or on the basic conditions of exploration and exploitation, was that they were aimed at achieving a compromise solution and set forth relatively flexible formulations. They were politically important since they expressed the common position of over 100 countries on issues affecting the whole of mankind.

57. The debate on the establishment of a working group had shown the importance which delegations attached to the mandate conferred on that subsidiary organ. Unfortunately, the Working Group had not begun real negotiations on the issues of principle. It was still at the exploratory stage and no firm positions had been adopted on the negotiations. Nevertheless, the establishment of the structure for future negotiation could be regarded as progress.

58. Negotiations had not yet begun because some delegations were reluctant to commit themselves with regard to the future régime until other issues before the Conference were settled. Unfortunately, the political will to negotiate and to make firm commitments was still lacking.

59. At the current session of the Conference, the First Committee had endeavoured to devise a régime and international machinery which would guarantee that the resources of the international area were exploited for the benefit of all mankind, particularly the developing countries. The interests of the developed countries could no longer be isolated from those of

developing countries and the prosperity of the former could no longer be achieved without the development of the latter. The developed countries which possessed the technology and financial capacity to exploit the resources of the sea-bed should bear that fact in mind. The system to be established for the exploration of the area and the exploitation of the resources therein could be viable only if it protected the wealth of the oceans from selfish exploitation. It was to be hoped that the developed countries would recognize that the Authority should be the custodian of the common heritage; otherwise the resources of the area beyond the limits of national jurisdiction might never be exploited for the benefit of mankind as a whole.

60. Mr. KEITA (Guinea) endorsed the views expressed by the representative of Tanzania with regard to the summary record. He noted that positions had remained virtually unchanged following the report by the Chairman of the Working Group. In that connexion, he shared the concern expressed by the President of Mexico at the 45th plenary meeting, who had stated that the great industrialized Powers wanted the competence of the Authority to be limited to the allocation of concessions and exploitation permits. Those countries wanted to make the Conference the Yalta of the Law of the Sea, although more than four fifths of the international community fully supported the revolutionary concept of the common heritage of mankind, as clearly stated in alternative B of draft article 9, submitted by the Group of 77. That proposal was aimed at protecting the resources which belonged to the international community for the benefit of mankind as a whole. It had been said that the Authority would interfere with efficiency of exploitation, but what was really meant was free-enterprise exploitation, a principle which had been criticized by the majority of delegations at the Conference. In that respect, the Caracas session had been a success since it had provided the opportunity to define the respective positions with regard to the noble ideals in the Declaration of Principles.

61. His delegation, faithful to the ideal of international co-operation based on justice and mutual benefit, had participated extensively in the elaboration of draft article 9 submitted by the Group of 77, which had received the support of many other countries. Guinea considered that any assistance which did not have the ultimate aim of enabling developing countries to become self-sufficient should be rejected. The countries opposing the document submitted by the Group of 77 wished to make the sea the private domain of those who possessed the requisite technology, thus depriving all the others of the right to development. The thinking of his delegation was not directed against anyone, it simply emerged from the correct interpretation of the Declaration of Principles.

62. Considering the issues before the Conference from both the national and international angle, his delegation had stated categorically that it supported the concept of a 200-mile territorial sea; it was anxious to ensure the security and the development of the Guinean people and at the same time, it was convinced that social justice and development would prevail throughout the world.

63. Political debate was inevitable at the Caracas session: there was evidence of a cleavage between those who favoured a system of concessions and exploitation permits in the international area and the Group of 77, which was unanimous in rejecting that system. It was precisely that unanimity which would ensure the realization of the novel concept of the common heritage of mankind. It remained to be seen whether the poor countries, which had in the law of the sea Conference a unique opportunity to establish a new legal system, were prepared to accept their responsibilities towards their peoples.

64. Mr. RAKOTOSIHANAKA (Madagascar), speaking on behalf of the group of African States, welcomed the fact that the First Committee had been able to hold serious discussions on the key issues, particularly article 9 and the conditions for the exploration and exploitation of the international area. The

group of African States, for its part, had spared no effort, to assist the Committee, both on its own and within the Group of 77.

65. The régime proposed in alternative B of article 9 should save the world from a merciless conflict of interests. The group of African States attached the greatest importance to the text prepared by the Group of 77, and he hoped that, with the co-operation of all concerned, the concept of the common heritage of mankind would be translated into a formula that was really worthy of it.

66. Miss MARTIN-SANE (France), speaking on behalf of the group of Western European and other States, congratulated the Chairman. It was only at the end of the session that delegations, having firmly stated their positions, had begun a dialogue within the Working Group. Since it had been decided that there would be no voting in the Working Group, it was comforting to know that, if its members did not succeed in reaching agreement on a particular issue, they could appeal to the good offices of the Chairman. They would surely do so more and more frequently.

67. Mr. KASEMSRI (Thailand), speaking on behalf of the group of Asian States, congratulated the Chairman of the Committee and the Chairman of the Working Group. He also thanked the Secretariat for its co-operation, and the Government and people of Venezuela for their welcome. The group of Asian States expected the Geneva session to be even more fruitful.

68. Mr. KOPAL (Czechoslovakia), speaking on behalf of the group of Eastern European States, expressed his thanks to the Chairman of the Committee and to the Secretariat. Even though modest, some definite progress had been achieved, and positions had been clarified. If all delegations demonstrated a spirit of understanding and a genuine determination to reach a compromise, further progress would be achieved at Geneva.

69. Mr. FONSECA TRUQUE (Colombia), speaking on behalf of the Latin American countries, emphasized that the positions adopted at Caracas on the question of who might exploit the area had been clearly defined for the first time. The adoption of a common position by the countries of the third world had created a constructive atmosphere, and he hoped that progress would be achieved at Geneva, as was to be expected from the report submitted by the Chairman of the Working Group. He thanked the Chairman and officers of the Committee, the Secretariat, and also thanked the Government and people of Venezuela for their warm hospitality.

70. Mr. RATINER (United States of America) said he wished to be associated with the congratulations addressed to the Chairman of the Committee. He thanked the Secretariat, the officers of the Committee and the Chairman of the Working Group.

71. Mr. KO Tsai-shuo (China) said he was sorry to have to point out that, in the document just distributed (A/CONF.62/C.1/L.11), the province of Taiwan was included in the list of countries in table 3. His delegation requested the officers of the Committee to take immediate and effective steps to correct that error.

72. Mr. PRIETO (Chile) recalled that the document in question had been submitted by his delegation. The tables annexed to that document contained data for 1967 and 1968 and had been prepared on the basis of documents dating from 1968 and 1969. The error referred to was a purely technical one, and should of course be rectified to take account of the current situation.

73. The CHAIRMAN said that the Secretariat would make the necessary adjustment.

Concluding statement by the Chairman

74. The CHAIRMAN said that in his statement of 10 July at the 1st meeting, he had emphasized the importance and the

historic nature of the mandate assigned to the Committee, and had particularly stressed the fact that the concrete realities of the new revolution of thought relating to ocean space would be worked out in the First Committee. The Committee's work had more than demonstrated the correctness of that view.

75. He congratulated the Rapporteur on the care with which he had prepared the statement of activities so as to avoid any controversy. No report of that nature could of course replace the summary records of the meetings, and not even the summary records could truly reflect the progress achieved on any particular issue.

76. In spite of the adoption of the concept of the common heritage of mankind as applicable to the area and the resources lying beyond national jurisdiction, there were still many difficulties to solve.

77. The Committee's task had therefore been to resolve those difficulties through negotiation. The documentation of the seabed Committee had revealed a few broad and well-defined issues which the First Committee had to resolve if it was to succeed; but over 55 States that were members of the First Committee had not participated in the preparatory work of the Committee, and they had therefore demanded the opportunity to express their views on the issues and their priorities. In that connexion, he congratulated the new members on their spirit of co-operation.

78. The Committee had decided to devote most of the time available to informal meetings; thanks to the freer and franker exchanges of views that had thus taken place, it had been possible to eliminate obstacles and define the positions of delegations on some very important questions, such as the economic effects of exploitation and the conditions of exploration and exploitation. It had also been possible to review and tidy up the first 21 articles on the international régime and to take out some brackets, alternatives and foot-notes.

79. The main issues which must be negotiated were now very clearly defined.

80. In the course of the debate, it had been further underlined that the first thing to determine was who would exploit the zone and how. The alternatives for draft article 9 spelled out the different positions, which were now very clear, and there had been grounds for hoping that the negotiations would be successful. However, the importance attached to off-shoots of the main issue and to the content of proposals relating thereto had made the discussion of the conditions of exploitation, namely, of how the zone was to be exploited, a crucial element in the negotiations. Yet another issue had drawn imperative attention—that of the adverse effects of exploitation of the resources of the area on the economies of land-based producers of similar resources, and on the developing countries as a whole. A consensus existed as to the need to take measures to ensure that such adverse effects were minimized where possible. It should be possible to provide the machinery with the means to take such measures when necessary.

81. A major choice faced the present generation; it had to choose between exploitation by the new International Authority, on the one hand, and the *de facto* monopoly of a few technologically developed countries under a licensing system, on the other. The alternatives under article 9 would seem to show a somewhat less rigid position on the part of the supporters of alternative A, permitting the participation of other entities under a contractual relationship with, and under the control of, the Authority. He believed there was room for more movement there, especially on the part of some of the technologically developed nations. That was why, following a request to that effect, he had begun preliminary negotiations on that issue some two weeks before. The Committee had then decided to establish a working group to negotiate both on that issue and on the conditions of exploitation. Realistic negotiations had therefore commenced at the level of the Committee, de-

spite the complexity of the issues to be resolved, the diversity of national interests and needs, and the revolutionary character of the ideas that had been proposed. That was definitely progress.

82. The negotiations had not led to any results that could be called spectacular, but all the difficulties which had stood in the way of negotiations had been thoroughly discussed. No agreement had yet been reached on treaty articles; to achieve that purpose, differences must be reconciled. He thought that it would be advisable to hold informal consultations between delegations and groups before the Geneva session. It would not be an impossibility to agree on treaty articles, but that could be done only if the ideas enshrined in the Declaration of Principles prevailed. It was no longer possible to tolerate a world dominated by a privileged few to the detriment of all the others but, on the other hand, there was nothing in contemporary trends which justified the conclusion that the young developing nations merely wished to bring down those privileged few and establish a new dictatorship of their own. In order to rule out any such eventuality, the new international community must be given the means to create conditions of peace for the survival of

man. The needs and interests of all could be met by rational exploitation of the common heritage of mankind. Endeavours should be concentrated on guaranteeing the equitable distribution of resources and benefits, not on the quest for new privileges or the perpetuation of acquired privileges. It was not a question of sharing stolen property but of organizing, on the basis of equality, the management of the common heritage. The adoption of a universal régime and the creation of new international institutions that responded to the realities of the modern world would help to promote real and lasting peace for the generations to come.

83. In conclusion, he expressed his gratitude to the officers of the Committee, the Special Representative of the Secretary-General, the heads of the various regional groups and the staff of the Secretariat. He thanked the Venezuelan Government and people once again for their hospitality and declared the work of the First Committee of the second session of the Conference closed.

The meeting rose at 6.30 p.m.

SECOND COMMITTEE

1st TO 46th MEETINGS

[The agenda and the officers of the Committee appear in Volume III of the Official Records of the Third Conference on the Law of the Sea, document A/CONF.62/L.8/Rev.1, annex II.]

SECOND COMMITTEE

1st meeting

Wednesday, 3 July 1974, at 10.30 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Organization of work

1. The CHAIRMAN said that the results of his consultations with the officers of the Committee, the Chairmen of the regional groups and some individual delegations led him to feel that there was general agreement on a number of aspects of the organization of the Committee's work. First, the Committee should begin its work on substantive matters the following week, towards the end of the general debate in the plenary meetings. He had been in touch with the President of the Conference with a view to arranging meetings so as to allow representatives to attend at least part of the plenary meetings. It had been suggested, for example, that the Committee might begin its work earlier in the morning and finish earlier.

2. Secondly, the topics assigned to the Committee should be taken up in official and unofficial meetings, as appropriate, with the Committee Chairman presiding. The success of the approach used by the President of the Conference in negotiations leading to the adoption of the rules of procedure was an excellent example of what could be achieved by discussion in unofficial meetings. Although no working groups would be established, at least at the initial stage, one or more unofficial *ad hoc* groups could be set up.

3. Thirdly, the items assigned to the Committee should be considered one by one in the order in which they appeared in the list. The idea was to consider each of the items, to identify the principal trends and reduce them to generally acceptable formulae, and then to "put them on ice", so to speak, without any decision. During the discussion of any given item, delegations could, of course, refer to related items. No decision would be taken before all the closely interconnected items had been fully considered. He suggested that during that stage of the discussions there should be no attempt to produce a definitive text of any convention provisions or articles relating to the items discussed by the Committee; drafting could be left until later. If real and significant results were to be achieved, the Committee must concentrate on the fundamental issues to be regulated by the future convention.

4. Fourthly, it was not yet possible to draw up a time-table, although the officers of the Committee were working on a tentative schedule. There were many items to be discussed, and it would be extremely difficult to allocate a definite time to each. The officers of the Committee could be given the responsibility of reviewing the progress of the work periodically in the light of the time available. Special steps could be taken, as provided in the rules of procedure, to expedite work when it was thought that the Committee was falling behind. It was important to retain sufficient flexibility for the Committee to be able to adapt its programme to the progress of its discussions.

5. Fifthly, he suggested that the Committee should not take a formal decision on the documentation which would serve as a basis for its work. Use could be made of all the documents

available. Those pertaining to the meetings of the preparatory committee would be extremely useful and should be discussed. Any new proposals by delegations and any suggestions that would help to reconcile divergent viewpoints would be very welcome.

6. Mr. YANKOV (Bulgaria), speaking on behalf of the group of Eastern European States, paid a tribute to the Chairman of the Committee.

7. The group on whose behalf he spoke was generally in agreement with the suggestions made concerning the organization of work. In view of the importance of the items to be discussed, substantive meetings should begin at the end of the general debate in the plenary meetings. Both official and unofficial meetings should be held; working groups might be set up later, but he agreed that it was too early to decide on their nature and terms of reference. Once the general feeling of the Committee on a particular item had been established, it should be "put on ice" for future consideration. Informal *ad hoc* working groups could be formed by delegations with similar views, or by delegations which wished to smooth out their differences. The existence of such groups must be conditional on their dealing with substantive issues; if used flexibly, the results achieved would be more effective. He stressed the need for extreme flexibility in the time-table of work: it might be misleading to draw up a tentative time-table.

8. Although the idea of limiting the length of statements in the general debate—a step allowed by the rules of procedure to expedite the work—might cause difficulties for some delegations, it would nevertheless be a wise step.

9. Mr. Cissé (Senegal), speaking on behalf of the African group of States, paid a tribute to the Chairman of the Committee.

10. The African group agreed that the Committee should start its work immediately. It did not favour the establishment of working groups, because the small size of many of the African delegations would prevent them from participating effectively in the work of a large number of such groups. It would prefer matters to be considered in official and unofficial meetings of the whole Committee. Experience of the approach used by the President of the Conference had shown that unofficial meetings were a useful technique. Although a decision by the Organization of African Unity (OAU) had made it imperative for the African countries to give special consideration to questions of the territorial sea and the economic zone, the African group could accept the suggestion to reach provisional agreement on the items one by one and to take a final decision only at the end. Flexibility was very important.

11. He pledged the co-operation of the African group in the work of the Committee.

12. Mr. GALINDO POHL (El Salvador), speaking on behalf of the participants in the meetings of the Latin American States

attending the Third United Nations Conference on the Law of the Sea, pledged the full co-operation of those States and said he hoped that the goodwill of all delegations would help to lighten the burden of responsibilities borne by the Chairman, whose statement had summed up the general feeling of the Committee. The Latin American meetings had convened twice to discuss the organization of work and had reached the same conclusions as those of the Chairman. The Committee should begin its work towards the end of the general debate in the plenary meetings; it would facilitate the work of the Committee if it were to conduct some of its business as an unofficial working group of the whole. Such an arrangement would also ensure complete co-ordination between the official and unofficial meetings. Official meetings were necessary for the purpose of hearing statements to be included in the records and for taking decisions. Other working groups could be established later. The suggestion to discuss items one by one would allow references to be made to related questions and would ensure the necessary order and flexibility. He endorsed the suggestion to "put on ice" items that had been concluded, in order to allow discussion of subsequent topics. The items would be considered separately, but decisions would be taken on the question as a whole. The question of drafting could be dealt with later. The time-table of work should be very tentative; it should be reviewed periodically by the officers of the Committee, who could suggest how much time should be allotted to each item. The Chairman's comments on documentation were very pertinent.

13. He paid a tribute to the Chairman of the Committee and said he thought that a good start had been made.

14. Mr. MANNER (Finland), speaking on behalf of the group of Western European and other States, said that a number of recommendations had been made at that group's meeting to discuss the organization of work. There should be only one working group—a group of the whole presided over by the Chairman of the Committee. The general debate should be limited as much as possible. It had been recommended that the Second Committee should be given priority where meetings were concerned, because of the vast range of items it had to cover. The time-table should be only indicative and should be as flexible as possible. All the documents available should be taken into account, particularly the alternative texts.

15. The CHAIRMAN said that he had already asked the President of the Conference to give the Second Committee priority, in view of the number and difficulty of the items it had to discuss. He had pointed out to the President that the fact that the Committee was behind the others in its work justified special treatment. The President had agreed, and the Committee could count on his full support. The general debate should be a brief exposition of the views of delegations; he hoped that delegations which did not have new proposals to make would not participate in the general debate.

16. Mr. CHAO (Singapore), speaking on behalf of the Asian group of States, paid a tribute to the Chairman and pledged him the group's full co-operation.

17. In general, the group was in agreement with the Chairman's proposals. As far as possible there should be no conflict between meetings of the plenary Conference and the Second Committee. There probably would be no need for working groups in the early stages of the Committee's work, but some members of the Asian group felt that the possibility of limited working groups should not be ruled out.

18. The group agreed in general that the items should be taken in order, but some members felt that the approach should not be rigid, since many items overlapped. There was general support for the Chairman's proposal that decisions should be deferred until all the items had been considered. The group agreed that there should be a tentative but flexible time-table for the consideration of the various items.

19. Mr. STEVENSON (United States of America) paid a tribute to the Chairman. His delegation accepted the Chairman's suggestions for the programme of work; they were flexible and tailored to the Committee's needs. He hoped that the general discussion stage would be limited and that delegations would direct their thoughts to the next stage—that of the preparation of texts. Although he agreed that the time had not yet come for drafting, the way should be prepared for it. Suitable organization of the Committee's work was essential if specific texts were to be drafted by the end of the summer.

20. Mr. ZEGERS (Chile) agreed that the Committee should concentrate on the basic issues and that there should be a limit to the length and number of statements in the general debate.

21. It was important that results should be achieved at the Caracas stage of the Conference, not only because of the efforts made by the Government of Venezuela, but also because, if the Conference achieved no results after 10 weeks, it would count as a failure. The Conference must adopt the key articles of a convention and their titles—in the form of a package deal. The package deal must not be merely a list of principles but must consist of the specific articles of a treaty. In the initial stages the Committee should not seek to attain legal perfection but rather to draft alternative texts which could be reviewed at a second reading.

22. He suggested that there might be a gentleman's agreement that no delegation should speak for more than 10 minutes in the general debate.

23. Mr. TUNCEL (Turkey) agreed with the representative of Chile that the Committee should concentrate on the basic issues; it must find a way of identifying divergent trends so that it could deal with them.

24. He agreed with the Chairman's proposal that there should first be a general debate, which would give new participants a chance to express their views, and thought that only such participants should speak in that debate. His own delegation would not do so and he hoped that the other delegations which had already made their views known would also refrain from speaking.

25. He noted that the spirit of *entente cordiale*, which reflected the idea of a gentleman's agreement, had not existed before the convening of the Conference. It was a good omen that such a spirit had been manifested in the adoption of the rules of procedure. The Committee must try to display that spirit in its own work.

26. He agreed that it would be undesirable to have a proliferation of working groups. It would be better for the sponsors of alternative draft articles to meet informally and try to reconcile their differences.

27. He endorsed the Chairman's suggestion that the Committee should use all the documentation available to it. Since the Committee already had before it many alternative texts, he did not think it necessary to draft any new ones. The sponsors of various articles should attempt to prepare definitive texts for submission to the Committee. He agreed with the representative of Chile that at Caracas the Committee should at least produce a set of general principles.

28. Mr. JEANNEL (France) said that the Chairman's proposals met the requirements of the situation and had his delegation's full support. Flexibility was indispensable for the successful conduct of the Committee's work. The Committee must adapt itself to the circumstances and select the most suitable method of work for each situation.

29. Mr. KEDADI (Tunisia) said that his delegation endorsed the Chairman's proposals and was particularly anxious that the Committee should begin its work as soon as possible and concentrate on achieving realistic and practical results.

30. He agreed that a flexible system of unofficial and official meetings was an excellent method but wondered whether it

would be possible to define at the current meeting how and when any working groups would be set up and what their terms of reference would be. His delegation, too, would be reluctant to have a multiplicity of subsidiary bodies, since that would make participation difficult for the smaller delegations.

31. The Committee should begin with what it was possible and easiest to do and then go on to the more difficult items. The officers of the Committee might group together similar alternative articles, and then the sponsors having similar ideas on a given topic should meet to attempt to reconcile their differences and agree on joint texts. At a later stage, working groups consisting of the sponsors of divergent texts might deal with the more complicated political matters requiring mutual concessions.

32. He noted that the Committee had taken no decision on documentation. His delegation felt that all existing documents should initially be considered as documents of the Committee, to which any delegation could submit amendments. The Committee would thus be able to begin its work in a practical manner.

33. The CHAIRMAN noted that the distinctive feature of the system he had outlined was its flexibility. He did not think that any working groups should be set up until the Committee's work so required. To begin with, the Committee would meet either officially or unofficially as a working group of the whole. Of course, that did not exclude the possibility of forming *ad hoc* working groups made up of representatives with similar views, and on occasion he might himself suggest that the sponsors of similar texts should meet informally. It might also be necessary for delegations with divergent views to meet in a working group, and the Committee might decide to set up open-ended or limited working groups to study specific topics. He urged that at the current stage the Committee should not take a firm decision on the matter.

34. Returning to the question of documentation, he said that the intention was that all existing documents should be considered documents of the Conference and the Committee. His proposal had been intended to prevent a debate on the status of documents. The Committee would certainly want to take advantage of the important work done in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. There would, of course, be new documents, notably from the States which had not taken part in the work of the sea-bed Committee.

35. Mr. ZOTIADES (Greece) said that his delegation, which would give the Chairman its full co-operation, accepted the programme of work outlined by him. He was gratified that all geographical groups had basically similar ideas on the subject, especially with respect to the suggestion that there should be one working group presided over by the Chairman.

36. The time-limit for statements in the general debate should be 10 minutes and delegations that had had the opportunity of expressing their views at the preparatory session should refrain from doing so during the general debate, thus giving priority to new delegations.

37. He trusted that the session at Caracas would produce specific articles of the convention and, to that end, the working group of the whole should, as had been suggested, begin with what was possible and feasible. It would be premature at the current stage to decide on the establishment of *ad hoc* groups; there could, instead, be informal meetings of sponsors of proposals in order to arrive at compromises.

38. Mr. LACLETA Y MUÑOZ (Spain) said that his delegation shared the Chairman's objectives and was gratified that the Committee would be able to adjust its work programme to its needs. He proposed that, in addition to appearing in the summary records, the Chairman's statement should be distributed as a Committee document.

39. Mr. FRASER (India), pledging the full co-operation of his delegation, said that he agreed with each point in the programme of work suggested by the Chairman. While his delegation agreed that working groups should be formed as needed, it opposed any fragmentation which might result from a proliferation of *ad hoc* groups. The procedure used by the President of the Conference for the adoption of the rules of procedure should be followed.

40. Mr. BAKULA (Peru) offered the Chairman the full co-operation of his delegation and said he hoped that the session of the Conference in the city of Simón Bolívar would lead to positive results. There seemed to be general agreement on the programme of work suggested by the Chairman and the adoption of a flexible approach would enable the Committee to formulate conclusions reflecting the position of the participating States.

41. Mr. ZULETA TORRES (Colombia) supported the work programme suggested by the Chairman, particularly in the light of the clarifications given.

42. Mr. ROSENNE (Israel) said that his delegation generally agreed with the Chairman's approach to the work of the Committee. He was particularly gratified by the suggestion that both official and unofficial meetings would be presided over by the Chairman and by the Chairman's clarifications regarding documentation.

43. The question of working groups was a delicate one and he shared the views of some delegations that it would be premature, at the current stage, to take a decision on the matter. Working groups should not be institutionalized, nor should they be given too formal a status. The sponsors of similar proposals should try by themselves to narrow any gaps between their respective positions.

44. His delegation was more concerned with the broader negotiating process which, under the rules of procedure, was to be the main feature of the Committee's work. The five points outlined by the Chairman seemed to meet that requirement, especially with regard to formality and flexibility.

45. Mr. TREDINNICK (Bolivia) agreed with the Chairman's suggestions regarding the programme of work.

46. Mr. SANTISO GALVEZ (Guatemala) agreed that there should be a 10-minute time-limit for statements in the general debate and said that his delegation, which completely endorsed the programme of work, would co-operate fully.

47. The CHAIRMAN, after thanking all delegations for their assistance in preparing the programme of work, said that, if he heard no objection, he would take it that the Committee accepted the guidelines he had set out.

It was so decided.

48. The CHAIRMAN said that, as the representative of Spain had suggested, the complete text of his statement would be distributed to all members of the Committee for reference.¹

49. He appealed for self-discipline not only in limiting the length of statements, but also in deciding whether to speak. The positions of many States were well known and, unless there were changes, he appealed to them not to participate in the general debate. If he heard no objection, he would take it that the Committee agreed to take no decision on the proposal to limit the length of statements in the general debate to 10 minutes until the need arose.

It was so decided.

50. The CHAIRMAN said that he would consult with the President of the Conference on the date of the Committee's first meeting on substantive issues. The date and time would be announced sufficiently in advance for delegations to be prepared. Following the guidelines he had suggested for the pro-

¹ The full text of the Chairman's statement was subsequently circulated as document A/CONF.62/C.2/L.2.

gramme of work, the first item would be the question of the territorial sea (item 2), but that would not prevent delegations from referring to or raising points on other items, if they considered them interrelated.

51. He expressed his thanks to all those who had paid him compliments and had pledged their co-operation.

The meeting rose at 12.25 p.m.

2nd meeting

Tuesday, 9 July 1974, at 9.55 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Territorial sea [Agenda item 2]

1. The CHAIRMAN said that, in accordance with the decision taken at its first meeting, the Committee would begin its substantive consideration of the items allocated to the Second Committee (see A/CONF.62/29) with item 2, dealing with the territorial sea. As had been agreed, there would be a short general debate on each item. He recalled that the Committee had decided to appeal to all delegations to use self-discipline so as to keep the general debate as short as possible; as a general rule, only those delegations which had not taken part 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 which had since changed their views, should speak in the general debate; the Committee was to work in a flexible manner, and in the debate on any given item delegations might refer to other related items.

2. He noted that the sea-bed Committee had done considerable preparatory work on the question of the territorial sea and he drew attention to the various draft articles relating to item 2.1, on the nature and characteristics of the territorial sea, including the question of the unity or plurality of régimes therein, which appeared on pages 3 and 4 of volume IV of the report of the sea-bed Committee (A/9021 and Corr.1 and 3). Three broad trends emerged from those articles: first, the traditional concept of the territorial sea as the zone adjacent to the coasts and internal waters of a coastal State, over which that State exercised full sovereignty, subject only to the right of innocent passage through the territorial sea; secondly, the concept of "national ocean space" over which the coastal State had jurisdiction; and thirdly, the proposal that each coastal State should be free to decide the limits of its territorial sea and to exercise sovereignty up to a limit of 200 nautical miles, a limit within which the coastal State would be able to establish various régimes and might even decide not to exercise its full sovereignty.

3. He invited delegations to comment on the item and noted that the Committee's initial aim was not to draw up final texts but to define substantial areas of agreement.

4. Mr. TUNCCEL (Turkey) suggested that in future the *Journal* should indicate the items to be taken up at meetings of the Committee and should give details of the relevant documents.

5. The CHAIRMAN said that there would be no difficulty in complying with that suggestion. The *Journal* had not given details of documents for the current meeting because at its previous meeting the Committee had decided that all documents could be discussed.

6. Mr. JAGOTA (India) said that in his delegation's view the definition of the nature and characteristics of the territorial sea should be simple and neutral, taking account of the major concerns of all countries. He wished to submit a draft text of article 1, which was similar to the United Kingdom

proposal (A/CONF.62/C.2/L.3). His country thought that the territorial sea should be small rather than large; if the question of the economic zone was satisfactorily settled, the Indian proposal might receive general support. The text, which he would submit formally in writing to the Secretariat, was the following:

"The sovereignty of a State extends beyond its land territory, and its internal or archipelagic waters, to a belt of sea adjacent to its coast, described hereinafter as the territorial sea.

"The sovereignty of a coastal State extends also to the air space over the territorial sea as well as to the sea-bed and subsoil thereof.

"The coastal State exercises its sovereignty in and over the territorial sea subject to the provisions of these articles and to other rules of international law."

7. Mr. DJALAL (Indonesia) suggested two amendments to the Indian text: the second paragraph should include a specific reference to the sovereignty of the coastal State over water columns and a reference to its sovereignty over the resources of the territorial sea.

8. Mr. JAGOTA (India) said that the amendments were acceptable to his delegation and suggested that the second paragraph should be reworded to read: "The sovereignty of a coastal State extends to the air space over the territorial sea, and to the sea, the sea-bed and subsoil thereof, as well as to their resources." That wording made it clear that the reference to resources did not relate to the air space.¹

9. Mr. SANTISO GALVEZ (Guatemala) asked whether it was in order for the Committee to consider the Indian text and Indonesian amendments before having them in writing.

10. The CHAIRMAN said that the proposals would not be considered until they had been circulated in writing. The purpose of the current discussion was to present ideas.

11. Mr. ZOTIADES (Greece) said that his delegation found the Indian proposal acceptable, although it had some hesitation regarding the second paragraph, which it found misleading. He therefore proposed that the second paragraph of the Indian proposal should begin with the words "The sovereignty over the territorial sea of a coastal State extends . . .".

12. Mr. VALENCIA RODRIGUEZ (Ecuador) endorsed the points made by the Chairman in his statement at the previous meeting concerning methods of work which had been circulated as document A/CONF.62/C.2/L.2. His delegation was in favour of the procedure outlined in paragraph 3 of that document. All proposals should be circulated in the different working languages before they were considered.

13. Mr. POLLARD (Guyana) said that his delegation intended to submit a formal proposal for the formulation of two

¹ The text of the article, as amended, was subsequently circulated as document A/CONF.62/C.2/L.4.

introductory articles concerning the territorial sea.² The proposed text would read:

"The jurisdiction of a coastal State extends beyond its land territory, including its internal and archipelagic waters, to an area of adjacent ocean space up to a seaward limit of 200 nautical miles."

It would then define jurisdiction in respect of the 12-mile limit, the contiguous zone, the 200-mile limit, and so forth. His delegation believed that that proposal would both surmount the problem of terminology and reflect the sense of the discussions so far.

14. Mr. MBAYA (United Republic of Cameroon) said that he would like a clarification concerning the proposed methods of work. The question of the territorial sea raised problems of various kinds; yet the Chairman in his opening statement on the item had addressed himself to only some of those problems.

15. The CHAIRMAN pointed out that, in accordance with paragraph 3 of document A/CONF.62/C.2/L.2, the Committee was to consider the items allocated to it one by one in the order in which they appeared in document A/CONF.62/29. Consequently, in his introductory statement he had referred to the various types of proposals concerning item 2.1, "Nature and characteristics, including the question of the unity or plurality of régimes in the territorial sea". The proposal submitted by the Indian delegation reflected one of the trends he had described.

16. Mr. RASHID (Bangladesh) asked whether consideration of the baseline from which the breadth of the territorial sea would be measured would be included in the discussion of item 2.

17. With regard to the Indian proposal, he suggested that a more precise word should be found to replace "adjacent" in the first paragraph, and that the words "other rules of international law" in the third paragraph should also be replaced by a more specific formulation.

18. Mr. TUNCEL (Turkey) said that if the Indian delegation submitted its proposal formally, his delegation would submit an amendment proposing that reference should be made to archipelagic States in the first paragraph.

²The full text of the proposal was subsequently circulated as document A/CONF.62/C.2/L.5.

19. The CHAIRMAN, replying to a question put by the representative of Turkey, said that the United Kingdom delegation's proposal (A/CONF.62/C.2/L.3) would be introduced at a subsequent meeting; the introduction had been delayed owing to the indisposition of one of the United Kingdom representatives.

20. Mr. ROSENNE (Israel) said that his delegation shared the feelings of uneasiness of other delegations concerning the difficulties to which the current working methods might lead. Some problems derived from the vastness of the subject and the essential unity of its component parts. Consequently, it would be advisable for the Committee to concentrate its attention on texts, not on abstract ideas. But it would be premature for the Committee to turn itself into a drafting body or to arrogate to itself functions that properly belonged to the Drafting Committee of the Conference as a whole.

21. Other problems were caused by the different meanings attributed to such words as "sovereignty", "jurisdiction" and "competence". It would therefore be advisable to take as a starting-point what was termed the classical approach, which had the advantage of employing well-tried and well-understood terminology. It would be preferable to consider the material content of proposals rather than their language.

22. Further difficulties stemmed from the fact that the material before the Committee was voluminous and difficult to follow. Israel had participated in some of the meetings of the sea-bed Committee as an observer and had had the advantage of witnessing the preparation of the report to the General Assembly (A/9021 and Corr.1 and 3), but many delegations had not been so fortunate.

23. The CHAIRMAN suggested that there should be a meeting of delegations which supported the traditional concept of the territorial sea as approved at the first United Nations Conference on the Law of the Sea, in 1958,³ with a view to the preparation of a consolidated text of their proposals. There should also be a meeting of delegations which favoured the plurality of régimes in the territorial sea for the same purpose.

The meeting rose at 11.20 a.m.

³See Convention on the Territorial Sea and the Contiguous Zone (United Nations, *Treaty Series*, vol. 516, p. 206).

3rd meeting

Thursday, 11 July 1974, at 9.30 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Organization of work

1. The CHAIRMAN, outlining the Committee's programme of work, said that the Committee would hold four morning meetings the following week, another four the week after, and thereafter five morning meetings every week until the penultimate week of the Conference. That programme was based on the assumption that there would be 27 working days; but meetings could be held in the afternoons, if that proved necessary, and even on holidays.

2. He and the other officers of the Committee would be prepared to organize and preside over informal meetings of delegations holding related views for the purpose of removing any differences of opinion that might exist.

Territorial sea (*continued*)

[*Agenda item 2*]

3. Mr. JÄNICKE (Federal Republic of Germany) said he approved of the organization of work envisaged for the Second Committee. It would enable the Committee to identify the areas of agreement and disagreement, to begin negotiations with a view to reconciling differences of opinion and to adopt final decisions within the framework of an over-all agreement covering all aspects of the law of the sea.

4. The Federal Republic's attitude towards the concept of the territorial sea and the law of the sea in general was influenced by certain features of its geography and economy, since its trade was very much dependent on free access to and free

routes of communication on the seas. That was why his country must emphasize the importance of preserving as much ocean space as possible for common use.

5. His country could accept the concept of a territorial sea not exceeding 12 nautical miles, measured from reasonable baselines. In any event, that implied a clear definition of the rights and obligations inherent in the concept of "innocent passage". The draft articles submitted by the United Kingdom (A/CONF.62/C.2/L.3) provided a sound basis for discussion, and the Federal Republic supported the concept of a territorial sea as it appeared in that proposal.

6. His country believed that it was vital to maintain freedom of passage and overflight through or over straits, many of which would fall within the area of the territorial sea if the 12-mile limit was accepted. Of course, any proposal on the subject should take into account the legitimate interests of the States bordering those straits. With regard to the concept of the economic zone, his delegation was prepared to recognize, within certain limits, the reasonable claims of coastal States—and, in particular, of the developing countries—with regard to the preservation of the living resources off their coasts and the acquisition of preferential rights over them; but it also considered it to be equitable, as well as vital to the interests of States which depended on those resources for their supply of food that such States should maintain the right of access to the resources under an internationally administered régime, on the understanding that the zone would retain its legal status of an integral part of the high seas.

7. In conclusion, he stated that his delegation was prepared to consider any proposal that respected the legitimate interests of all States.

8. Mr. RANJEVA (Madagascar) observed that the majority of delegations that had spoken in the debate had referred to the concept of an economic zone or patrimonial sea without, however, taking it to its logical conclusion, namely, the identification of the economic zone with the territorial sea.

9. It was not possible, from an analysis of the jurisdiction of States over the different zones, to establish a distinction between the territorial sea and the economic zone. That meant that a compromise solution could become a source of conflict, and it was therefore necessary for the Conference to seek new approaches that would enable it to reach an agreement.

10. His delegation considered that the delineation of maritime areas would only prove possible if due account was taken of the development and protection of the community thanks to the effectiveness of the sovereign power of the State. The development of war arsenals by States meant that the traditional limits of the territorial sea had lost their original purpose, while the dictates of economic development called for a national maritime zone that was as vast as possible.

11. Taking into account the circumstances, and in order to meet the needs of the community by defining a suitable legal régime for maritime areas, his delegation proposed that there should be a new division of maritime space into the national maritime zone and the international maritime zone. The establishment of the national maritime zone was linked to the requirements inherent in the sovereignty of the coastal State. Furthermore, the Conference should give up the idea of differentiating between the territorial sea and the economic zone in order to simplify the problem. With the new division he was proposing, a State's sovereignty, which in the view of the Malagasy delegation consisted of the rights and obligations derived from international law, would extend over the whole of the national maritime zone. Such sovereignty would not, however, relieve the State of its obligations to observe existing legal rules.

12. Madagascar therefore considered that the power to determine the breadth of the national maritime zone should necessarily be consonant with the national and discretionary jurisdiction

of the sovereign State, which alone was entitled to lay down the régime of activities that might be carried out within the limits of the national maritime zone and to define legislative policy on the subject although it was not entitled to take arbitrary measures.

13. The rules applicable to the zone should be the provisions of internal law, and only the coastal State could decide whether or not a plurality of régimes was fitting within its national maritime zone. The Conference should provide for a procedure for publishing such provisions and giving other States the opportunity to challenge their validity.

14. His delegation considered that the national maritime zone should extend for 200 nautical miles, i.e., the breadth for the exclusive economic zone sought by the Heads of State or Government of Non-Aligned Countries in their resolution concerning the law of the sea adopted at Algiers in 1973, and by the Organization of African Unity in its Declaration on the issues of the law of the sea (A/CONF.62/33). That seemed to be a reasonable distance and would not raise any practical difficulties. In order to make the national maritime zone an effective reality, Madagascar was proposing that the highest points of the geographical perimeter of the place in which the economic and security activities of the coastal State were carried on should be adopted as the points for tracing the baseline of the geometrical figure. His delegation nevertheless believed that a national maritime zone, if established, could not lawfully be used for the benefit of any non-national communities in the territories in question.

15. Beyond the 200-mile limit, Madagascar proposed the establishment of an international maritime zone, in which the coastal State should play a special role. By reason of its location, the coastal State had to assume functions it would discharge on behalf of the international community and would therefore be obliged to supervise a specific number of activities that were carried out in that zone. The coastal State must be granted the right of claim over any resources and of prosecution of any unlawful activities that originated in the national maritime zone, following notification to the International Sea-Bed Authority.

16. In conclusion, he stated that a working document would be issued containing the details of his proposal.

17. Mr. HERRERA CACERES (Honduras) said that Honduras was not party to any of the Geneva Conventions on the law of the sea; it had participated as an observer in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and, at the regional level, it had signed the Declaration of Santo Domingo.¹ Honduras had coastlines on the Atlantic and Pacific oceans, and had geographical characteristics that would require special legal regulation. Its territorial sea extended for 12 nautical miles from the low-water-line except in those places where the coastline was deeply indented or broken, or where there were islands in the immediate vicinity. In the Atlantic ocean, at a distance of less than twice the breadth of the territorial sea, there was a fringe of islands which constituted a single geographical whole, the department of Las Islas de la Bahía. Those islands had always been regarded as part of the mainland of Honduras, which considered they formed a coastal archipelago and maintained that the baseline of the territorial sea was, in that sector, the line between the mainland and the corresponding points on those islands, and that consequently the waters between those lines were internal waters.

18. Honduras was one of three coastal States bordering on the Gulf of Fonseca in the Pacific Ocean. That gulf was regulated exclusively by existing delimitations and agreements between the coastal States. The legal concept contained in article 7 of the 1958 Geneva Convention on the Territorial Sea and

¹ *Official Records of the General Assembly, Twenty-seventh session, Supplement No. 21 and corrigendum, annex. I, sect. 2.*

the Contiguous Zone² would be applicable to that bay but for the exception laid down in that article, i.e., that it related only "to bays the coasts of which belong to a single State" and that it would not apply to so-called "historic" bays. He regarded the latter provision as open to objection because of its discriminatory nature. It was discriminatory to exclude bays which bordered the coasts of various States when, as in the present case, all the coastal States maintained that the waters of the bay were internal. Although there was no established legal norm, the status of that bay had been accepted by the coastal States. It had never been maintained that the entrance to the Gulf of Fonseca was an international strait, which showed that the legal unity of all parts of the bay was generally accepted. Moreover, there was no valid reason for excluding from the legal concept of bays the so-called "historic" bays in cases where the concept applied to them. His delegation therefore maintained that the traditional concept of "historic" bays should be revised because it had been elaborated in response to a former need for a legal definition of bays under the exclusive competence of the coastal State.

19. In connexion with the question of the outer limit of the territorial sea, he said that he considered the method using the arc of a circle best suited to the different geographical characteristics of different coastlines and also the most desirable, since it would facilitate navigation. With regard to the delimitation of the limits between the territorial sea of Honduras and that of adjacent States, his delegation believed that the system that should be used, unless otherwise agreed by the parties concerned, was that of the median line equidistant from the closest points on the baseline of the adjacent territorial seas, which in the Pacific ocean was the line between the geographical points in the entrance to the Gulf of Fonseca and in the Atlantic ocean the line following the general direction of the coast including the archipelago of Las Islas de la Bahía. Honduras recognized the traditional concept of the territorial sea and the right of "innocent passage" of ships of any nationality; but the concept of "innocent passage" applied to navigation within the territorial sea and not within the internal waters of a State. That was important in connexion with the provision of article 5 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, which ignored the difference between two areas which were basically different because the principle of innocent passage did not apply to one of them.

20. He stressed the fact that his delegation's position on the breadth of the territorial sea was indissolubly linked to the right of the State in an area in which it would control, protect and exploit resources—an area extending for 200 nautical miles from the baseline of the territorial sea of Honduras.

21. Mr. GOERNER (German Democratic Republic) said that, in the view of his delegation, the rules of the Geneva Convention on the Territorial Sea and the Contiguous Zone should in principle be included in the new convention on the law of the sea. With regard to the question of the delimitation of the territorial sea, his delegation believed that the rules contained in articles 3 to 13 of the Convention on the Territorial Sea and the Contiguous Zone should apply in future as they were in keeping with traditional practice. Since the Second United Nations Conference on the Law of the Sea, when the proposal submitted by the USSR for limiting the breadth of the territorial sea to a maximum of 12 nautical miles narrowly missed approval, almost 100 of the 120 coastal States had recognized the 12-mile limit, which showed that that limit was in the interests of States with different social systems, different levels of development and different geographical locations. The rule according to which each State had the right to establish the breadth of its territorial sea within limits not exceeding 12 miles measured from the baseline was also adequate from the points of view of the security of the coastal

State and of international navigation. No special geographical situation and no political or economic pretext could justify the extension of the territorial sea beyond the 12-mile limit admissible in international law. The interests of the various coastal States in the utilization of the resources of an area beyond the 12-mile limit of the territorial sea were covered fully by the concept of the economic zone.

22. The question of the contiguous zone was of special importance, particularly for States with a territorial sea of less than 12 miles, which included the German Democratic Republic, whose territorial sea was 3 miles wide. The new convention on the law of the sea could very usefully incorporate the rule contained in article 24, paragraph 2, of the Convention on the Territorial Sea and the Contiguous Zone.

23. The rules contained in articles 14 to 22 of the Convention on the Territorial Sea and the Contiguous Zone had demonstrated their usefulness in practice, but he nevertheless supported the proposal that the concept of innocent passage as defined in article 14 of that Convention should be clarified and that the new convention should specify what activities could not be carried on during innocent passage through the territorial sea. That would prevent any future unilateral interpretation of the concept of innocent passage. It would also be very useful to include in the convention on the law of the sea rules providing a more detailed basis for legislation by the coastal State in respect of innocent passage of foreign ships through the territorial sea and the obligation of ships of other States to comply with those laws. He agreed with the ideas contained in article 18 of the United Kingdom draft (A/CONF.62/C.2/L.3). He fully shared the view that the new convention on the law of the sea should also take account of the fundamental difference between innocent passage through the territorial sea and free passage through straits.

24. Mr. DUDGEON (United Kingdom), introducing the draft articles on the territorial sea and straits contained in document A/CONF.62/C.2/L.3, said that his country, which relied on the sea for a large part of its international trade and which had a long coastline as well as several straits, had a very real interest in the régime for navigation which would apply on the high seas, in the territorial sea and in straits used for international navigation. For that reason, the draft sought to strike the right balance between the interest of the international community in freedom of navigation and the interest of the coastal State or the straits State in protecting itself.

25. The draft articles, which consisted of two chapters, one on the territorial sea and the other on passage of straits used for international navigation, had been prepared after a careful study of all proposals submitted on those subjects to Subcommittee II of the sea-bed Committee, particularly those made by the so-called "straits States group" (A/9021 and Corr.1 and 3, vol. III, sect. 6) and by Fiji (*ibid.*, sect. 31). So far as straits were concerned, they took into account both the proposals by the "straits States group" and the separate texts submitted in 1972 by the Soviet Union³ and in 1971 by the United States.⁴

26. Chapter II, on the territorial sea, was concerned primarily with the question of navigation through the territorial sea and, in particular, with the balance which had to be struck between the rights of coastal States and those of ships on passage.

27. The United Kingdom was prepared to accept a territorial sea of 12 miles provided there was a satisfactory régime for passage through straits and the territorial sea.

28. The draft articles contained no new proposal on the subjects of baselines or the delimitation of the territorial sea between neighbouring States, as the United Kingdom considered

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

³Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 and corrigendum, annex III, sect. 5.

⁴*Ibid.*, Twenty-sixth Session, Supplement No. 21, annex IV.

that the existing rules on those subjects were generally satisfactory.

29. At the heart of the proposals on innocent passage was the word "innocent", and article 16 therefore provided a clear definition of that term and specified those activities which would render passage non-innocent. Article 18, for its part, clarified the powers of the coastal State to make laws and regulations relating to innocent passage; that article also provided that foreign ships, when exercising the right of innocent passage, were under the obligation to comply with such laws and regulations.

30. A number of references had been made in the plenary meetings to the need to compensate the coastal State for pollution damage emanating from passing ships. In that regard, attention was drawn to two recent conventions: the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. Article 28 of the draft articles dealt with responsibility for damage caused by a ship entitled to sovereign immunity.

31. Chapter III, concerning straits, sought to establish the right balance between the legitimate concerns of the straits State and the interests of the international community at large in the use of the strait for navigational purposes. Accordingly, article 1 defined a concept of transit passage which was consistent with existing practice. Articles 1 and 6 provided for a secure right of navigation and overflight for ships or aircraft proceeding from one part of the high seas to another through or over waters connecting those two seas. Article 2 imposed strict requirements on ships and aircraft exercising the right of transit passage, thus providing safeguards for the straits State. Article 3 also provided for the introduction of sealanes and traffic separation schemes in order to regulate navigation in the straits in the interests of safety. In that regard, his delegation believed that the most appropriate body to study such traffic separation schemes would be the Inter-Governmental Maritime Consultative Organization. Article 4 took into account the interests of the straits State in the making of laws and regulations relating to transit passage, with which foreign ships exercising the right of transit passage would be obliged to comply.

32. The interests of the international community in unimpeded navigation was not so strong in the case of straits used for international navigation between one part of the high seas and the territorial sea of a foreign State as it was in the case of straits linking two parts of the high seas. That difference was recognized in article 8 of the United Kingdom proposals. Straits linking the high seas with the territorial sea of a foreign State would be subject to the current régime of non-suspendable innocent passage and not to the régime of transit passage. The same formula would apply to straits formed by an island of the coastal State and connecting two parts of the high seas. In that case, under article 1, paragraph 4, and article 8 of chapter III, a régime of non-suspendable innocent passage would also apply.

33. Mr. LACLETA Y MUÑOZ (Spain), introducing the draft articles contained in document A/CONF.62/C.2/L.6, observed that the basic goal of that proposal was to harmonize points of view, and especially the principles contained in the proposals of Guyana and India (A/CONF.62/C.2/L.4 and 5). Thus, articles 1 and 2 sought to define concepts that would cover the whole range of possibilities opened up by the principles of 12 and 200 miles. Specifically, article 1 referred to the powers of the coastal State over maritime space beyond national jurisdiction, and article 2 referred to the sovereignty of coastal States over their territorial sea, which in his delegation's view was an area in which the coastal State exercised full authority.

34. Finally, article 3 was intended to provide a clarification and interpretation and to make it clear that maritime space situated in a strait forming part of the territorial sea was itself territorial sea and therefore subject to the sovereignty of the coastal State.

35. Mr. ROSENNE (Israel) said that his delegation's position concerning the nature and characteristics of the territorial sea, including the question of the unity or plurality of régimes in the territorial sea, was based on an approach which conceived of the territorial sea as an extension of the sovereignty of the coastal State into, over and under the sea.

36. With regard to the band of territorial sea, which should be narrow, and the consequences which would follow upon its enlargement, the main concern of his delegation was the question of freedom of movement. That position was sometimes termed traditional or classical, but his delegation wished to avoid terms which could give rise to doctrinal controversy. His delegation considered the band of territorial sea to be necessary and justified on functional grounds. He did not believe that a satisfactory explanation had been given for the Conference to change that basic concept, which underlay not only a large part of the law of the sea, but also other branches of international law. On the other hand, it should be remembered that the usefulness of the concept of territorial sea as an extension of sovereignty had been sufficiently demonstrated and had important consequences not only in domestic and international public law but also in private law. For that reason, his delegation doubted whether the introduction of conceptual changes without detailed and impartial study of all the implications would constitute a positive contribution to the development of the law of the sea.

37. Finally, he reserved the right of his delegation to revert to that and other aspects of the subject under consideration if necessary.

38. Mr. LUPINACCI (Uruguay) endorsed the views expressed by the representative of Madagascar. It was preferable to abandon the nomenclature applied to the different maritime areas, and to dispense with names in favour of concepts. The terms territorial sea, patrimonial sea, economic zone, etc., covered a very wide range of ideas, which did not lend themselves to rigid classification. Therefore, it was preferable to speak simply of a national and an international area, since the essential thing was not to give descriptive names to determine the juridical nature of those maritime spaces.

39. The dilemma facing the Conference lay in the conflict between the concept of sovereignty and that of freedom of the seas. Neither of those two principles had ever predominated absolutely. On the other hand, it was necessary to bear in mind that sovereignty combined both rights and duties, and those duties constituted the best guarantee for the protection of the rights of third States.

40. Mr. ABAD SANTOS (Philippines) said that he wished to comment on the United Kingdom proposal contained in document A/CONF.62/C.2/L.3.

41. The Philippines was an archipelago, and that fact had a decisive influence on its attitude to the problems of the territorial sea. The formula proposed by the United Kingdom for the limits of the territorial sea in chapter II of its proposal appeared to be somewhat incomplete, since no mention was made of the baselines of an archipelagic State. The document did not take into account the draft article on archipelagos presented to the sea-bed Committee by Fiji, Indonesia, Mauritius and the Philippines (A/9021 and Corr.1 and 3, vol. III, sect. 38) nor did it make any proposals concerning the breadth of the territorial sea based on historic titles.

42. As to the formula proposed by the United Kingdom for straits, the waters of a strait were obviously not high seas; that is to say, they could be regarded as the territorial sea, or even the internal sea. It was necessary to distinguish clearly between

territorial sea and internal sea where straits were concerned. The Philippines could not accept a proposal which did not take that distinction into account, since that would suppose that traffic could pass through its internal waters without any form of restriction. If it was decided that the waters of a strait formed part of the territorial sea, there would appear to be no need to envisage special rules for straits, since application of the right of innocent passage would be sufficient. Consequently, chapter III of the document submitted by the United Kingdom was superfluous.

43. Finally, his delegation could not accept the right of overflight of territorial or internal seas.

44. Mr. MBAYA (United Republic of Cameroon) supported the Uruguayan appeal for the elimination of the distinction between the territorial sea and the patrimonial sea, which only led to sterile discussions. The Uruguayan delegation's support of the statement made by the delegation of Madagascar led him to think, however, that there was perhaps some confusion. The Malagasy representative had referred to an exclusive economic zone and to the need to carry that idea to its logical conclusion, implying that it should be accepted as part of the territorial sea, which did not agree with what the representative of Uruguay had urged.

45. The Malagasy argument was based on security requirements and economic considerations; he wondered whether the security requirements were as convincing as they appeared, since technological progress in weapons meant not only that the 3-mile limit was out of date, but that even a 200-mile limit would not be sufficient to ensure security. As to the economic considerations, he doubted whether they justified an extension of the territorial sea. His delegation did not feel that they did. The apparently straightforward distinction between a national zone and an international zone could disappear with the introduction of a plurality of régimes. He wondered what difference there was between an economic zone and the territorial sea. In raising those questions, he did not mean to start an argument but to contribute to the work of the Committee, which could not make any progress if delegations did not reach agreement on fundamental issues.

46. Mr. ARIAS SCHREIBER (Peru) said that the distinction suggested by the representative of Madagascar between a national and an international zone was interesting. The idea was not new but the Malagasy representative's approach was novel and contained important principles. Discussions had taken place in the sea-bed Committee concerning the need to re-examine those established ideas, which had been formulated to fit into a context that no longer existed, and to formulate new concepts, such as the national sea and the international sea, which would bring the rules of the law of the sea into line with current conditions. He agreed that discussions on names should be avoided, and that the important thing was to determine the nature and extent of the rights and duties of States in waters adjacent to the coast and waters in the contiguous zone. In that sense, the Malagasy proposal was very interesting. He also agreed in principle with the Uruguayan statement, which allayed the doubts expressed by the representative of Israel.

47. Mr. POLLARD (Guyana) said that the draft submitted by his delegation (A/CONF.62/C.2/L.5) had four main objectives, namely: to reflect the existing consensus concerning the delimitation of the jurisdiction of the coastal State, to introduce functional cohesion into the various drafts submitted up to then, to suggest what criterion should be used for the preparation of the draft articles and to prevent any conflicts in wording. Hence the language used in the draft was carefully chosen. The word "jurisdiction" was used, a generic term, which included all expressions connected with the exercise of authority by the State. The word "jurisdiction" was also in

accordance with the provisions of General Assembly resolution 2749 (XXV), which recognized the existence of two areas, one within and the other beyond national jurisdiction. For those reasons that word was preferable to any other term. Jurisdiction involved the legitimate exercise of authority, which in turn implied the legitimate enjoyment of competences. "Jurisdiction" embraced sovereignty, sovereign rights and preferential rights, and it was therefore a term that unified the various expressions used. The wording of the draft in question prejudged one thing only: the extension of the jurisdiction of the coastal State; it left open for decision by the Committee the quality and intensity of the State's jurisdiction in the various areas falling within its competence. The draft did not prejudice the question of acquired rights. In regard to the proposal submitted by Spain (A/CONF.62/C.2/L.6), he considered that the use of the word "powers" in the draft was unfortunate and might lead to controversy. Power signified the capacity to produce intended effects and was amenable to legitimate or illegal employment. His delegation understood the justification for the draft and supported the spirit of the proposal, but it could not accept that word.

48. The CHAIRMAN said that it was a question of translation and that the word used in the original Spanish was "*competencia*".

49. Mr. BEESLEY (Canada) said that what had to be done was to restructure the existing rules, which did not mean rejecting earlier concepts but adapting them to existing realities.

50. The two traditional principles of sovereignty and freedom of the seas were no longer sufficient and, among other things, did not include the idea of the patrimonial sea or national maritime zone. Special care was needed to co-ordinate concepts and to avoid confusion, as could happen with the principle of the common heritage of mankind, which might mean two things: that its resources should be distributed on a basis of equity, or that they belonged to whoever first gained possession of them.

51. The aim of the Conference was to devise a system which would be fair to all, so that the convention it was drafting should be ratified by as many States as possible; there should be no hesitation in resorting to other branches of law to identify concepts; for instance, the development of space law in recent years could mean an important contribution to the law of the sea, as both had concepts in common, such as the common heritage of mankind.

52. In conclusion, he said he agreed with the United Kingdom that the patrimonial sea should find its justification in the concept of equity, and on that basis it might perhaps be possible to avoid all problems of terminology that had arisen.

Organization of work

53. The CHAIRMAN, replying to suggestions regarding the method of work of the Committee, said that the sea-bed Committee, acting as the preparatory committee of the Conference, had approved a list of subjects and issues, which had been ratified by the Conference and had served as a basis for assigning items to the three Main Committees (see A/CONF.62/29). In such circumstances a firm mandate existed to examine specific items. However, the aim of the method of work that had been adopted (see A/CONF.62/C.2/L.2) was to identify conflicting trends concerning different concepts, and he did not think that that list of subjects was a factor likely to inhibit consideration in depth of the principles underlying the concepts.

54. In the circumstances he did not consider it necessary to change the method of work that had already been approved.

The meeting rose at 12.25 p.m.

4th meeting

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

Chairman: Mr. Andrés AGUILAR (Venezuela).

Territorial sea (*continued*)

[*Agenda item 2*]

1. Mr. GALINDO POHL (El Salvador), speaking in connexion with the statement by the representative of Honduras at the preceding meeting concerning the Gulf of Fonseca, said that the effects of applying the concept of a 12-mile territorial sea and the rule of equidistance to determine the outer limits were not at all as the Honduran representative had described them. If the concept of a 12-mile territorial sea accepted by Honduras was applied, two of the three coastal States situated on the Gulf would completely close off the entrance to the Gulf; moreover, all the distances measured from Honduran territory to the line of entry to the Gulf exceeded the 12-mile limit of the territorial sea, whereas those from the land territory and islands of El Salvador fell within the radius of 12 nautical miles.
2. Since the Salvadorian islands of Conchaguita, Meanguera and Meanguerita were situated between Honduran *terra firma* and the entrance to the Gulf, he wondered whether Honduras was seeking to assert some claim over them. If that were the case, he must state categorically that El Salvador exercised sovereignty over those islands and was not prepared to accept any hypothesis that could affect its territorial integrity.
3. In conclusion, his delegation asked the Chairman whether it was in order to discuss bilateral issues in the Second Committee. As he saw it, the Committee was entrusted with the task of preparing general rules which would subsequently serve as the basis for settling specific cases.
4. The CHAIRMAN explained that, although the aim of the Third United Nations Conference on the Law of the Sea was to consider and adopt general rules, every delegation was free to refer to its own special geographical situation and also, where appropriate, exercise its right of reply in order to explain its position.
5. Mr. TUNCEL (Turkey), introducing the draft articles submitted by his delegation (A/CONF.62/C.2/L.8 and 9), said that, when considering criteria for measuring the breadth of the territorial sea, account must be taken of the seas with special geographical characteristics to which general rules could not be applied. That was why paragraph 2 of document A/CONF.62/C.2/L.8 made special provision for cases in which a coastal State's access to the high seas might otherwise be cut off. That provision was an exception to the rule for determining the breadth of the territorial sea and was intended to ensure that any new rules that were adopted would not give rise to conflicts or deprive coastal States of rights they had previously exercised.
6. Paragraph 3 of the same draft article referred to semi-enclosed seas having special geographical characteristics, such as the Caribbean, the Baltic, the ocean space around the Indo-China peninsula, the Mediterranean and others. His delegation believed that the best approach to that question—and one in keeping with the spirit of the Conference—was to make provision for negotiations between the States of the area concerned.
7. As far as the delimitation of the territorial sea was concerned, his delegation's proposal (A/CONF.62/C.2/L.9) referred to a situation in which the coasts of two or more States were adjacent and/or opposite to each other and was based on three principles. First, resort should be had to negotiations in order to determine boundary lines: such negotiations should be conducted equitably so as to enable the States concerned to reach conclusive agreements. Secondly, the proposal incorporated the notion that the median line, or the line of equidistance, was only one of several methods of delimiting the maritime boundaries between States, as had been recognized by the International Court of Justice in a decision concerning the North Sea;¹ his delegation stressed the fact that the median line was not always applicable, since special geographical circumstances, such as the special configuration of coasts and the existence of islands, must be taken into consideration. Thirdly, the existence of islands constituted one of the special cases. The presence of islands, islets and rocks would complicate the consideration of provisions, especially those referring to the continental shelf and the economic zone. The Conference must recognize that the existence of islands, islets and rocks conferred special geographical characteristics on the area in which they were situated.
8. Paragraph 3 of his delegation's proposal provided for peaceful means of resolving differences of the kind employed by the International Court of Justice in the North Sea case.
9. Mr. RABAZA VASQUEZ (Cuba) said that the Third Conference on the Law of the Sea was under an obligation to listen to the views of those States which had not participated in the work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and had consequently not stated their position on several of the questions and issues which the Conference had to consider.
10. The geographical situation of Cuba prevented it from having a wide territorial sea or a uniform economic zone, but his country had given full support to Peru and Ecuador, both of which countries advocated a zone under national sovereignty and jurisdiction extending for 200 nautical miles. With regard to the living resources of the area under national jurisdiction, his delegation believed that many coastal States would not be able fully to exploit the fish resources in their zone and should therefore allow other States to enter the area, on a non-discriminatory basis, under a concession or licence, with priority given to the developing countries, particularly those that were land-locked and geographically disadvantaged, and to States to whose economy fishing was absolutely essential.
11. In that connexion, he said that his country supported the idea of regional or subregional solutions, in accordance with the resolution concerning the law of the sea adopted by the Fourth Conference of Heads of State or Government of Non-Aligned Countries, held at Algiers from 5 to 9 September 1973.
12. Many Caribbean countries were geographically disadvantaged, and the Conference must recognize the need to reach agreements which would provide those States with preferential rights of access to living resources within the zones under national jurisdiction of States in the same region or subregion. The right of geographically disadvantaged States to fish in regions in which they had always fished should also be protected.
13. Cuba was very dependent on sea lanes and, in spite of the criminal blockade imposed on it, had overcome the crisis and now had a large modern merchant fleet.
14. His delegation supported the retention of the existing régime of straits used for international navigation; in other words, the convention to be elaborated by the Conference

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

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

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

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

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

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

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

20. Mr. MANNER (Finland) said that in the debate so far, statements had been made in favour of the plurality of régimes with regard to the maritime zones subject to the jurisdiction of coastal States, besides the traditional notion of the territorial sea as approved in 1958 by the First United Nations Conference on the Law of the Sea in the Convention on the Territorial Sea and the Contiguous Zone.² His delegation based its position on the classic notion of the territorial sea according to which it was an integral part of the State's territory, and there did not seem to be any reason for changing the legal régime on which the rights and powers of a coastal State over the belt of sea adjacent to its coast were traditionally based. His delegation had some difficulty in understanding the reasons for basing the system of powers of the coastal State principally upon the concept of jurisdiction. His delegation did not consider sovereignty to be the most comprehensive form of jurisdiction; on the contrary, sovereignty embodied, among other things, jurisdiction which, as such or in the form of a "restricted sover-

eighty", could also refer to the continental shelf, the fishing zone, or the proposed new economic zone. The notion of a rising scale of competences did not underline with sufficient clarity the essential difference which traditionally existed between the legal status of the territorial sea and the adjacent maritime area, which was still part of the high seas. In that connexion, his delegation wished to point out the importance of preserving the function of the outer limit of the territorial sea as the actual boundary of the State with the high seas or with the territorial sea of a neighbouring State. Even if it was thought that the proposed economic zone should not be considered a part of the high seas because it was a zone in a class by itself, the nature and the status of the territorial sea should not be disturbed. Although it might be possible to list all the powers of the coastal State with respect to the maritime area closest to its coast, his delegation believed that the use of the traditional concepts of the territorial sea and sovereignty would continue to be the most precise way of defining the content and the nature of the theoretically unlimited powers of the coastal State over the maritime area in question. In conclusion, his delegation's attitude with respect to the different draft articles which had been presented to the Committee would be determined by its view that the fewer changes there were in the text approved in 1958 the better.

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

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

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

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

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

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

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

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

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

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

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

30. His delegation was not opposed in principle to the introduction of new concepts, since the aim of the Conference was to produce a new law of the sea. The dual concept proposed contained some objective elements and was likely to receive the support of the majority of coastal States, but not without giving rise to a certain amount of concern in land-locked countries. If out-dated concepts needed to be abolished they could be replaced, for example, by the concept of a national maritime zone or the much more altruistic concept of a regional mari-

time zone. Such a formula would have the advantage of covering all those that benefited from the sea, that is to say, both the coastal States and the land-locked countries. He was not discussing semantics but expressing thoughts which he hoped would contribute to the various attempts at agreement in the Committee. As the representative of the Soviet Union had said, there appeared to be a tendency in the Committee to differentiate between the territorial sea and the economic zone; he agreed with the representative of Finland that it would be better not to change the nature and juridical régime of the territorial sea.

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

32. His country had therefore welcomed the proposal concerning the new concept of the patrimonial sea submitted by Colombia in 1972 to the preparatory committee for the Specialized Conference of the Caribbean Countries on Problems of the Sea, a proposal that had previously been submitted by Venezuela to the sea-bed Committee in Geneva in 1971. His country had also participated in the preparation of the Declaration of Santo Domingo³ and he reaffirmed its full support for the principles of that Declaration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Article 1

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

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

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

"Article 2

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

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

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

50. The principle established in paragraph 3 was an essential element of the Ecuadorian proposal. His country's position was based on the legal norms set forth in various declarations, such as the Santiago Declaration of 1952 and the Declarations of Montevideo⁵ and Lima⁶ of 1970. His delegation considered reasonable a maximum limit of 200 miles, especially for States having a wide or open sea, but that did not mean that it was in favour of a 200-mile territorial sea for all States. What Ecuador was proposing was that the coastal State should extend its territorial sea to the limit previously indicated. Consequently, in view of the diverse circumstances of coastal States, the most appropriate solution appeared to be a regional or subregional arrangement that took account of the variables referred to in the resolution on the competence of States to determine their territorial sea, adopted at the Third Meeting of the Inter-American Council of Jurists, held at Mexico City in 1956. It should also be borne in mind that no international rule yet existed for determining the breadth of the territorial sea.

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

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

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

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

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

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

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

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

with the representative of El Salvador that a dispute existed regarding the territorial and maritime boundaries between Honduras and El Salvador; Honduras, for its part, had always manifested its willingness to settle those boundaries as soon as possible.

55. Mr. GALINDO POHL (El Salvador), speaking in exercise of the right of reply, stressed that the Conference was not an appropriate forum for airing bilateral disputes, and maintained that referring to particular cases to support general ideas was different from formulating positions which encroached upon the established rights of other States. That was what the representative of Honduras had done when he had referred at the previous meeting to the delineation of waters between adjacent States and, at the current meeting, to historic bays, and he cited in that connexion a judgement of the Central American Court of Justice of 1917.⁷ On whatever theory the delineation of either the territorial or internal waters was based, Honduras would be deprived of access to the line of entry to the Gulf. What was more, the Honduran representative had even referred to problems of territorial and maritime boundaries, which would only raise further problems. If the Committee agreed, El Salvador intended to pursue the controversy.

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

The meeting rose at 1.20 p.m.

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

5th meeting

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

Chairman: Mr. Andrés AGUILAR (Venezuela).

Territorial sea (*continued*)

[*Agenda item 2*]

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

2. When several countries, including his own, had established a 200-mile limit for their territorial sea, they had taken into account three legal considerations: first, a territorial sea was recognized by international law; secondly, international law empowered the coastal State itself to establish the breadth of its territorial sea; thirdly, international law did not set a maximum limit for the breadth of the territorial sea. The 200-mile limit had therefore been established within the framework of existing international law. The extensions had been made with a view to giving effect to the Declaration of Lima adopted in

1970,¹ which recognized, *inter alia*, the inherent right of the coastal State to "explore, conserve and exploit the natural resources of the sea adjacent to its coasts and the soil and subsoil thereof, likewise of the continental shelf and its subsoil, in order to promote the maximum development of its economy and to raise the level of living of its people". Neither the Declaration of Lima nor the Declaration of Montevideo of 1970² laid down a 200-mile limit as a general criterion. Both stated that the limits must be set in accordance with the geographical, geological and biological conditions of the area and the need for a rational utilization of its resources.

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

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

¹ Document A/AC.138/28 of 14 August 1970.

² Document A/AC.138/34 of 30 April 1971.

regard to the exploration and exploitation of the natural resources or over the resources themselves within an area not exceeding 200 miles in breadth, which would be called the patrimonial sea or the exclusive economic zone. As he understood it, most of the delegations that accepted that view agreed that the coastal State would have sovereign rights in the zone between the limits of its territorial sea and the limit of its economic zone. However, other delegations, which were willing to accept the concept of the patrimonial sea or the exclusive economic zone, clearly wished that belt to be considered a part of the high seas in which the coastal State would have only certain specified preferential rights, not as a projection of its sovereignty but as a kind of contractual concession in a foreign area.

5. Lastly, there were others which considered that the belt of adjacent sea up to 200 miles in breadth was under the jurisdiction of the coastal State as a consequence of its sovereignty. For those delegations there were only two fundamental zones in the oceans, a national sea, extending up to 200 miles in breadth, and an international sea beyond that limit. Most of the countries which held that view called the waters adjacent to the shores of the coastal State its territorial sea. The proposal submitted by the representative of Ecuador at the previous meeting (A/CONF.62/C.2/L.10) was designed to make those views clear, and the Brazilian delegation therefore supported it. However, the concept of the territorial sea upheld by those countries was different from that of the traditional territorial sea. Some of the countries which claimed a 200-mile limit for their territorial sea were willing to recognize freedom of navigation and overflight in that zone; others, of which Brazil was one, had liberalized their concept of innocent passage so as to ensure that there would be no impediment to the passage of ships and aircraft, a necessity for international navigation, transport and communications.

6. One of the main handicaps with which delegations had to deal was the fact that they were trying to work out new concepts using a traditional terminology. Although the list of subjects and issues before the Conference (see A/CONF.62/29) mentioned the territorial sea and the contiguous zone before the high seas, and also mentioned the economic zone, it seemed likely that the Conference would end up by defining only two broad zones, each under a precise legal régime, the international sea and the national sea. For one as for the other an adequate set of legal rules had to be established, and even the traditional freedoms of the seas would have to be subject to regulation in the international zone. The common interest in such activities as navigation, fisheries, the exploitation of mineral resources and the control of pollution would impose mandatory norms of behaviour on all States exercising any activity in that zone. Without prejudice to the competence of international bodies, the residual powers not falling within the set of norms he had mentioned could be exercised by all States. In the same way, the rights and duties of States in the national maritime zone would have to be spelt out. In his view, it was possible to prescribe norms that would guarantee the legitimate interests of both the coastal State and of third States with regard to navigation, fisheries, the laying of cables and pipelines and any other reasonable matter.

7. Since it was normal for the residual powers in the international zone to be exercised by all States, it was also normal that in the national zone such residual powers should be reserved for the coastal State. In that way third States would in fact enjoy a double guarantee: their interests would be clearly enunciated as legal rights, and whenever the coastal State exercised any of its residual powers it would have to take into account the general principles that had led to the enunciation of those rights.

8. The comprehensive approach that he had outlined might be summarized as follows. First, the convention should define as specifically as possible rights and duties for the whole of the

ocean space. Secondly, such rights and duties should be basically different for the two zones, national and international. Thirdly, in a national maritime zone the residual powers should be reserved for the coastal State; in the international maritime zone they should belong to all States. The Committee should bend its efforts to framing a specific definition of the rights and duties of each State in each of the two maritime zones. That should be done without attempting to tie the rights and duties to any particular basic position held by delegations. Only after the rights and duties had been defined should an attempt be made to fit them into a general framework, which should encompass as many of the basic positions as possible. The Committee should have in mind Hans Kelsen's distinction between norms of international law, which were statements of mandatory behaviour, and rules of international law, which were legal concepts used to describe international law.³ If the Conference was to be successful in its task, it should go straight to the heart of the matter and concentrate on drafting a truly normative order for the sea.

9. Mr. RASHID (Bangladesh) introduced his delegation's proposal (A/CONF.62/C.2/L.7) concerning the nature and characteristics of the territorial sea. His delegation supported the traditional concept of the territorial sea, namely, that every coastal State exercised absolute sovereignty beyond its land territory and internal waters over a belt of sea adjacent to its land territory, subject only to the right of innocent passage. Accordingly, his delegation supported the concept on which the United Kingdom proposal (A/CONF.62/C.2/L.3) and the Indian proposal (A/CONF.62/C.2/L.4) were based, but it thought that paragraph 1 of its own proposal made the essential point clearer. The definition of the nature and characteristics of the territorial sea must not be ambiguous or refer to any other rules of law. It should be self-contained and it should be interpreted with reference to the provisions of the Convention and to nothing else. Thus, his delegation could not accept the expression "other rules of international law" in the United Kingdom and Indian texts, since it was susceptible of different interpretations.

10. His country favoured a territorial sea of 12 miles and an economic zone of 200 miles, measured from the baselines. Bangladesh was a coastal State with more than 1,000 miles of indented coastline and many offshore islands. In the monsoon season the rivers of the Ganges delta deposited more than 10 million tons of silt in the Bay of Bengal. Thus, the Ganges delta had no stable low-water line and its navigable channels were continually changing. The only feasible method of demarcation of the landward and seaward areas was a baseline expressed in terms of a certain depth. The present method of determining the baselines, set forth in articles 3 and 4 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone,⁴ did not take account of the geographical peculiarities of the coastline in States such as his own. The provisions of the new convention dealing with the drawing of baselines should, therefore, take account of such geographical and hydrographical peculiarities of the coastal States as had legal relevance. At the appropriate time his delegation would submit a text concerning the drawing of baselines in such cases.

11. Mr. ROE (Republic of Korea) said that, because of its geographical location and special security concerns, his country had some particular problems with regard to the territorial sea and the right of innocent passage. It was one of the few countries which had not yet declared the breadth of its territorial sea, in expectation that a general consensus would be reached at the Conference. He reaffirmed his country's support for a maximum limit of 12 nautical miles, measured from ap-

³See Hans Kelsen, *General Theory of Law and State*, translated by Anders Wedberg (Cambridge, Massachusetts, Harvard University Press, 1949), pp. 341–343.

⁴United Nations, *Treaty Series*, vol. 516, p. 206.

appropriate baselines, in accordance with the provisions of the 1958 Geneva Convention.

12. His delegation thought that the United Kingdom proposal (A/CONF.62/C.2/L.3) was a good basis for consideration of the question of the passage of foreign vessels through the territorial sea. The proposal was an attempt to reconcile the general interests of international communications with the particular and very grave security concerns of coastal States. In general, his delegation could accept the United Kingdom text, but he wished to comment on two points.

13. First, chapter II, article 16, of the text did not provide a satisfactory definition of what constituted innocent passage. Paragraph 2 of that article should have stated positively that the passage of a foreign ship should be considered not innocent if such and such acts were committed, instead of the negative formulation used. Furthermore, in enumerating the acts which were not innocent, the article omitted some important acts which were of major concern to coastal States: acts such as espionage, the collecting of information, or propaganda against the coastal State, or any other warlike or hostile acts or acts which did not have a direct bearing on the passage. Such acts should be specifically mentioned in order to avoid any ambiguity or misinterpretation.

14. Secondly, the passage of warships through a territorial sea which did not constitute a necessary and important route for international navigation should be differentiated from the passage of other types of vessel. A coastal State should have the right to require foreign warships passing through its territorial sea to give prior notification of that passage or to obtain prior authorization for it.

15. Mr. ZULETA TORRES (Colombia) said that his delegation's position concerning the nature and characteristics of the territorial sea was the same as that of many delegations from different parts of the world and with different levels of development and varying legal traditions. According to that position, the territorial sea was defined as a belt of 12 nautical miles measured from the baselines, over which the coastal State exercised full sovereignty, subject to the right of innocent passage. The 12-mile territorial sea was necessarily linked to the acceptance by the international community of an economic zone or patrimonial sea of a maximum breadth of 200 nautical miles. In that zone the coastal State was to have sovereign rights with regard to the exploration and exploitation of the renewable and non-renewable natural resources situated in the superjacent waters or in the sea-bed and the subsoil thereof. It was also to have rights and duties with respect to the protection of the marine environment and the control of scientific research. His delegation understood the combination of territorial sea and economic zone to be an indivisible whole. Such a formulation would reconcile the economic goals of the developing countries, which wished to have jurisdiction over the natural resources adjacent to their coasts, with the need to maintain the right of free navigation and overflight and the laying of cables and pipelines.

16. The notions of territorial sea and economic zone must of course be governed by a clear method of delimitation between States with opposite or adjacent coasts and, if necessary, by a procedure for the peaceful solution of disputes. The concept of an economic zone should be clearly formulated in the convention so that its demarcation would not lead to the closing of any State's territorial or internal waters.

17. Mr. BAKULA (Peru) said that his delegation supported the proposal submitted by Ecuador (A/CONF.62/C.2/L.10) because it corresponded to the rights proclaimed by his own country, which considered that a territorial sea of 200 miles was a reasonable one for many regions but should not be compulsory for all States. The desire to limit the territorial sea to 12 miles was understandable in narrow seas where the distance between States did not permit a higher limit, but the

12-mile limit was not justified in open seas and oceans where States were separated by hundreds of miles. Within the maximum limit, States must be able to establish a breadth of territorial sea suited to the realities of their region. The essential difference between the two positions was that some States wished to impose on the whole world a limit of 12 miles, which was insufficient to protect the rights of other nations, while other States accepted that there could be different limits and that the 12-mile and 200-mile limits could coexist, subject to the protection of the general interests of international communications.

18. Some States maintained that the coastal States could not be granted residual rights of sovereignty or jurisdiction over a territorial sea or economic zone of 200 miles, but that three types of jurisdiction must be recognized: that of the coastal States, that of the flag States, and that of the International Sea-Bed Authority. That argument might be acceptable if the space in question was situated in the middle of the ocean where all States had equal rights, but it was logical that certain coastal States should exercise residual rights over the waters adjacent to their coasts in order to protect the interests of their peoples.

19. The crux of the matter was not the name given to the seas adjacent to the coastal States, but the nature and scope of the rights granted to those States. His delegation would consider any names, such as national zone or national sea, as long as it was understood that the coastal State exercised sovereignty and jurisdiction, without prejudice to the establishment of a dual régime for navigation guaranteeing freedom of passage, or to the adoption of internal regulations guaranteeing national peace and security.

20. Mr. JACOVIDES (Cyprus) drew attention to the proposal on the breadth of the territorial sea submitted by his country to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (A/9021 and Corr.1 and 3, vol. III, sect.7). He recalled that it had been decided that all documents of the sea-bed Committee were deemed to be before the Second Committee. The reasons for his delegation's position had been given in the sea-bed Committee and in its general statement at the 40th plenary meeting.

21. Mr. LUPINACCI (Uruguay) expressed his delegation's support for the proposal made by the delegation of Ecuador at the preceding meeting (A/CONF.62/C.2/L.10) which was basically the same as that made by his country (A/9021 and Corr.1 and 3, vol. III, sect. 13) at the July 1973 session of the sea-bed Committee.

22. At the current stage of its work, the Second Committee should not spend too much time on terminology. It was more important to determine the legal nature of the régimes applicable to different zones. His delegation supported the establishment of different régimes in the territorial sea, since the basic concepts of international maritime law were still valid because they were based on logic, although they must be adapted to present-day realities. Two fundamental statutes governed the maritime spaces, one based on the principle of sovereignty and the other on that of freedom. The formula of sovereignty and freedom would always underlie any formulation adopted. Those principles were represented by the two traditional concepts of the territorial sea and the high sea. Any formulation adopted would always mean that one of those principles would prevail over the other, which would be expressed in the final instance by its residual application. Thus, with regard to the territorial sea, whatever limitations might be established for the sovereignty of the coastal State, such as the right of innocent passage, the essence of the concept was apparent in the residual application of the principle of sovereignty. The representative of Pakistan had said at the 4th meeting that there was little difference between a territorial sea with different régimes and the concept of a 12-mile territorial sea combined with an economic zone or patrimonial sea of up to 200 miles, and that in the

latter case the territorial sea and the economic zone formed a single unit, as had just been confirmed by the representative of Colombia, who considered that the territorial sea and the economic zone should constitute an indivisible whole. The concept of different régimes in the territorial sea was therefore more reasonable and technically sounder, because it maintained the single concept of the zone of sovereignty of the coastal State, while allowing different régimes for international communication within that zone. His delegation therefore supported the proposal of the representative of Ecuador, provided that, once the nature and extent of the rights of the coastal State in its adjacent sea and those of third States and the international community had been clearly defined, the Committee agreed to abandon the old terminology and work out a new one.

23. Mr. ZOTIADES (Greece) said that the Conference seemed to have reached near unanimity on a limit of 12 nautical miles for the territorial sea and on the general and uniform application of that rule. His delegation welcomed the Chairman's statement that the Conference's aim was to draft universal rules of general application. It found it juridically difficult to accept an exceptional legal régime for certain seas such as enclosed and semi-enclosed seas. Although all coasts had special characteristics, the rule of law should govern all cases and not leave a wide margin for deviation from basic international law.

24. The point had been made that in semi-enclosed seas the limit of the territorial sea should be determined jointly by opposite or adjacent States. The social needs that had prompted the preparation of the Conference would not be realized if the delimitation of maritime boundaries was left to agreement among States in accordance with equitable principles independent of those of international law. The expression "equitable principles" itself introduced an element of subjectivity and ambiguity.

25. On the basis of international theory and practice, the median line or equidistance principle embodied in article 12 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and widely used in bilateral conventions should apply in the case of narrow seas.

26. It had also been said that the 12-mile limit should not deprive States of access to the high seas, but that would only be valid if the right of innocent passage did not apply to the legal régime of the territorial sea.

27. The Greek delegation had submitted its proposal (*ibid.*, sect. 5) to the sea-bed Committee in the sincere belief that the median line of equidistance should not be either an arbitrary or an absolute rule. That proposal provided the necessary flexibility by the interrelation of the two elements of agreement and equidistance. The principle of the median line placed States in a position of equality in relation to neighbouring States which might be tempted to bargain in a legal vacuum. Failing agreement reached freely and under conditions of equality, the equidistance principle should come into operation as the applicable rule of international law. The existence of the guiding rule of law would mitigate any excessive demands based on special circumstances or on the novel and unacceptable idea put forward at the preceding meeting that islands, *per se*, constituted in general special circumstances.

28. The representatives of both Finland and Uruguay had referred at the preceding and current meetings respectively to the notion of territorial sovereignty. As repeatedly declared by the International Court of Justice, territorial sovereignty embraced the sum total of the territory of the State, be it continental or insular. In paragraph 57 of the judgment of the International Court of Justice in the North Sea continental shelf cases,⁵ the Court accepted that departure from the median line of equidistance could not be made in the case of islands but only in that of islets or rocks. In any case, that judgment of the In-

ternational Court was not relevant to the delimitation of the territorial sea, because it referred to that of the continental shelf. Furthermore, one of the parties had not ratified the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. It might however be of interest to recall that in paragraph 23 of that judgment, the Court had observed, with reference to the principle of equidistance, that no other method of delimitation had the same practical convenience or certainty of application.

29. Mr. ROBINSON (Jamaica) reiterated his delegation's statement in the sea-bed Committee that Jamaica did not support the concept of the economic zone or the patrimonial sea or sovereign territorial zones beyond 12 miles, but as a compromise it was prepared to accept the establishment of such zones provided that right of access was granted to the geographically disadvantaged developing countries in order to exploit their resources. That position was clearly set forth in the draft articles on regional facilities for developing geographically disadvantaged coastal States (*ibid.*, sect. 45) submitted to that Committee in 1973. His delegation would be unable to accept the concept of a territorial sea beyond 12 miles unless those draft articles were not only embodied in the future convention but also so placed that it was evident that they were an essential qualification of the establishment of the zone itself.

30. Mr. ABAD SANTOS (Philippines) said that his delegation had no objection to the establishment of 12 nautical miles as the breadth of the territorial sea if that was generally acceptable to the Conference. He wished, however, to draw attention to the draft articles on historic waters (*ibid.*, sects. 35, 36 and 37) submitted by his delegation to the sea-bed Committee in 1973. The substance of those draft articles was that any State which had already established a territorial sea with a breadth greater than the maximum provided in the convention to be adopted should not be subject to the limit set out therein. The 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, in article 7, paragraph 6, recognized the historic rights of coastal States to "historic" bays regardless of their area or width of entrance. A preparatory document for the First United Nations Conference on the Law of the Sea had pointed out that historic rights were claimed in respect not only of bays but also of other maritime areas.⁶ That concept had also been recognized by Sir Gerald Fitzmaurice, now one of the Judges of the International Court of Justice, in an article entitled "The law and procedure of the International Court of Justice 1951-1954: General principles and sources of law".⁷ His country's position on that historic principle had been expressed not only at meetings of the sea-bed Committee but also at sessions of the General Assembly. On 9 August 1973, at the 72nd meeting of Sub-Committee II of the sea-bed Committee, the head of the Philippine delegation had outlined the history of the territorial waters claimed by his country. Those waters had passed from the sovereignty of Spain to that of the United States in 1898 and their area was specified in a law passed by the latter country in 1932. When the Philippines had become independent in 1946, it had continued to exercise sovereignty over those waters, as expressly stated in its Constitution and statutes. The proposals made by the Philippine delegation in the sea-bed Committee had been that the exceptional status of "historic" waters should be stated in positive law and that the territorial sea under historic title should be excluded from the rules governing the delimitation of that sea. There seemed no valid reason why only historic bays should be excepted from the applicable rules of international law. If no exception was made of other historic waters, the Philippine delegation's acceptance of an approved breadth of territorial sea of 12 miles

⁶ *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.31/1, para. 8.

⁷ *British Year Book of International Law*, 1953 (London, Oxford University Press, 1954).

⁵ *North Sea Continental Shelf, Judgment*, I.C.J. Reports 1969, p. 3.

would deprive it of about 230,000 square miles of territorial sea. The head of the Philippine delegation had therefore announced the Philippines' intention of seeking recognition of the present limits of its territorial waters in codified international law at the Third United Nations Conference on the Law of the Sea.

31. Mr. GALINDO POHL (El Salvador) said that the Ecuadorian proposal (A/CONF.62/C.2/L.10) was most pertinent. It was necessary to identify the different trends of thought and to find the common denominator, without prejudice to the peculiarities and nuances of each national position. The proposal was a very precise expression of one of those trends. His country had its own approach and its own arrangements concerning the territorial sea, but he did not wish to discuss them in detail at that time, when the goal was to identify general trends and not to catalogue national positions.

32. El Salvador applied a very special criterion to the terms used. It felt that substance was more important than terminology. Ecuador had insisted that everything should be given a very specific name, and one of the merits of its proposal was that it helped to clarify positions.

33. He wished to comment on the meaning of the term "territorialism". A quarter of a century earlier, when some countries had begun to lay claim to a greater breadth of territorial sea than had then been customary, they had used the terms that were then in current use, but they had used them with a new meaning. The result was that confusion had arisen about the actual meaning of those terms. The idea of territorialism was, paradoxically, not indissolubly linked to the idea of the territorial sea as defined in the 1958 Convention on the Territorial Sea and the Contiguous Zone; on the contrary, territorialism was compatible with silence on the subject of the traditional territorial sea. Territorialism did not necessarily imply the traditional concept of the territorial sea in the entire area in question. It referred to a new and broader concept, which encompassed the old territorial sea in a more comprehensive and diversified framework, without undermining its unity. Territorialism signified plurality within unity.

34. Territorialism was associated with sovereignty, but it was not absolute sovereignty. In a zone with a régime involving innocent passage and freedom of navigation in the respective sub-zones, sovereignty could not but be limited. Why was the word sovereignty used in such a case? It was a concise way of referring to the powers of a State and it was a short and convenient way of saying that the residual powers were to be exercised by the coastal State. If that formula was not adopted, it would be necessary to enumerate all the powers and even to specify that residual powers would be vested in the coastal State. The criteria for the interpretation of the agreed rules would also have to be expressly stated.

35. Territorialism was consonant with a plurality of régimes. The traditional territorial sea was part of a broader synthesis in which that traditional concept found its place, together with new elements. Within territorialism, there might be several different régimes, for example, a régime of innocent passage and a régime of free navigation, but their common denominator was the idea of sovereignty.

36. In addition, territorialism projected the power of the coastal State into a specific space, but that power was limited. Territorialism was therefore spatial, and conferred power over the resources contained in the space in question.

37. Within the plurality of régimes, economic interests and security interests relating to the coastal State coexisted in the zone of innocent passage; in the zone of free navigation, those economic interests still existed but, so far as security was concerned, the coastal State was in a similar position to the other members of the international community, which made that second sub-zone into an economic zone. In the zone of free navigation, which was further from the shore of the coastal

State, responsibility for security did not lie with the coastal State but was subject to international rules. The coastal State acted in that case as another member of the international community and was therefore subject to those rules, but without prejudice to its economic rights and interests.

38. It was possible to speak of a national sea, subject to different régimes; one of its sub-zones would be under the régime of innocent passage and the other sub-zone would be the one in which the coastal State had economic interests.

39. The authentic rights of the authentic international community would thus be safeguarded. A distinction should be drawn between the interests of the international community and the interests of the great shipping Powers, which sometimes claimed to speak and act on behalf of the international community.

40. Within the common denominator of the 200-mile rights of the coastal State, two questions remained: the content of those rights and the technique used to express and define them. The great majority of participants in the Conference was in favour of a national zone in which the coastal State would have significant rights. The authentic rights of the authentic international community could be safeguarded in the process.

41. Mr. PLAKA (Albania) said that the Committee was approaching the most important problems connected with the sea, and it was time to consider the points of greatest concern to delegations and to map out strategies for the future.

42. The overwhelming majority of the participants—the countries of Asia, Africa and Latin America and other sovereign and peace-loving States—had declared their determination to defend their legitimate rights in the face of flagrant violations by the imperialist and colonial Powers. A new law of the sea was therefore required, for the old law of the sea had done nothing but perpetuate injustice and serve the political, military and economic interests of the great imperialist Powers. The countries he had mentioned had also shown their desire to see that the new law of the sea should incorporate the changes introduced into the law of the sea by the practice of sovereign coastal States. The major trend was toward a codification of the legal norms relating to the sea with a view to ensuring the national sovereignty and safeguarding the economic interests of the sovereign coastal States in their territorial waters.

43. The United States and the Soviet Union were opposed to that trend, however. They did not accept the changes introduced by the practice of the sovereign coastal States, particularly with regard to the breadth of their territorial sea, and were opposed to the efforts of those States to formulate a law of the sea that would be in harmony with their inalienable rights. The United States and the Soviet Union wished to impose on other sovereign States a 12-mile limit for their territorial sea, regardless of the fact that some countries had already extended their territorial sea beyond that point. Such an attitude was contrary to the principle that every country was free to define the limits of its territorial sea at a reasonable distance from its coast, provided it did not prejudice the interests of neighbouring countries or international navigation—a principle that had been invoked by the two super-Powers themselves in defining their own territorial sea. That principle should be strengthened by the convention to be adopted by the Conference. Such a strengthening was all the more necessary because the independence of the sovereign coastal States was threatened by the warships of the two super-Powers, which ranged up and down the oceans, passing close to the shores of other countries in pursuit of their policy of domination.

44. No international instrument of recognized legal value laid down a maximum limit of 12 nautical miles for the territorial sea, and even the previous conferences had failed to set such a limit. There were important considerations which militated in favour of an extension of the territorial sea. The most important was national security and the second was the fact that

the fishing fleets of the two Powers he had mentioned pillaged the fishery resources of the other countries, even within their territorial waters, as in the case of Peru, Ecuador and other sovereign coastal States, whose territorial waters had been violated by the fishing fleets of the super-Powers.

45. Every sovereign State was entitled to set a limit of not less than 12 miles to its territorial sea. Albania itself was reconsidering the question of the breadth of its territorial sea with a view to its possible extension beyond the existing 12-mile limit.

46. His delegation understood the fully justifiable motives and the circumstances which had obliged some coastal States to extend their territorial waters up to a 200-mile limit. They had taken that decision for reasons of national security and to ensure the survival of their populations. As was well known, fishing was the principal means of livelihood for the peoples of Peru and Ecuador, for example.

47. His delegation supported the Ecuadorian proposal, which provided for a territorial sea 200 nautical miles in breadth. It also supported the position of the Latin American and other countries that maintained that the exclusive economic zone or patrimonial sea should extend up to 200 miles and should be under the sovereignty and national jurisdiction of the coastal State.

48. The super-Powers accepted the idea of an economic zone but they wished to apply a régime to it that would make it in effect an international zone. Moreover, they wished to make the economic zone coterminous with the territorial sea. There were no sound arguments in favour of that stipulation, for each country was free to decide the breadth of its territorial sea in accordance with its own circumstances.

49. The two Powers he had mentioned had proposed a package deal, the main purpose of which was to ensure free passage for their navies and air forces through and over straits that lay within the territorial waters of other States. That was not a fair deal. There was no reason why such passage should be a condition for the establishment of an exclusive economic zone.

50. Their attempts to internationalize the straits located on the limits of the territorial waters of the coastal States must be stopped, and the sovereignty of the coastal States over their straits must be secured. The coastal States had clearly defined their position in the general debate. They had no intention of preventing international traffic through the straits used for international navigation, but they were fully entitled to take whatever steps were necessary to protect their national security, particularly in view of the frequent and unjustified movements of the warships and military aircraft of the super-Powers through and over their territorial waters. The passage of warships through those waters and through straits located in territorial waters should be governed by the law of the coastal States; they should receive prior notification of such passage and no passage should be attempted without their consent. That would be in the best interests of international peace and security.

51. The discussions in the Second Committee should lead to the elaboration of a new law of the sea which would rule out domination and establish a régime of equity and justice, conditions favouring good-neighbourly relations and international co-operation, the economic development of the coastal and land-locked States, particularly the developing countries, and protect their interests and national security. In view of the efforts of the two super-Powers to sow discord among the coastal States and the land-locked and geographically disadvantaged countries, i.e., those that were interested in the establishment of an exclusive economic zone, and the straits States, the countries of Asia, Africa and Latin America and all other peace-loving countries should unite and fight for their legitimate rights. The problems of the sea with which the Committee had to deal were complex and there would be difficulties

to surmount but all those problems should be resolved through consultation and direct and open discussion in the Committee itself. Delegations should not allow themselves to be inveigled into other discussions by indirect and covert approaches, particularly when the super-Powers were behind them.

52. No decision should be taken in haste. Each problem should be discussed in a spirit of justice and there should be no infringement of the rights of sovereign States and peoples by a compromise which would safeguard only the interests of the super-Powers. Priority should be given to substance and that must reflect and reinforce the inalienable rights of the peoples, their economic interests and their national security.

53. Everyone knew that if a new law of the sea was to emerge, it would be born from a struggle between the sovereign coastal States, which rightly wished to secure their inalienable rights, and the big imperialist maritime Powers, particularly the two that were seeking to preserve their military, political and economic interests and their privileged position with regard to the sea. The interests of those two groups of States were conflicting and mutually exclusive. For that reason, any compromise put forward at the instigation of the super-Powers carried with it a risk that damage would be done to the essential interests of the sovereign States and should therefore be rejected. The overwhelming majority of the participants in the Conference were sovereign and peace-loving States. They must defend their rights to the utmost, and not recoil before any pressure or blackmail from the two super-Powers; they would then be sure to triumph.

54. The Albanian delegation was ready to combine with other justice-loving countries in their efforts to achieve that end.

55. Mr. MOVCHAN (Union of Soviet Socialist Republics), speaking in exercise of the right of reply, said that a certain delegation had read out a text in plenary meeting and it now seemed that it was going to read the same text with regard to every agenda item. The Soviet delegation had already replied in plenary meeting to the effect that the topics before the Conference should be dealt with in a constructive spirit. Everyone present was tired of hearing the same tune. Was it not time to change the record? The statement he was referring to was certainly out of keeping with the general effort to work in harmony. His own delegation would continue to observe the Chairman's request that proceedings be conducted in a constructive manner.

56. Mr. PLAKA (Albania), speaking in exercise of the right of reply, said that the statement by the representative of Soviet social-imperialism had merely underlined the validity of his own statement. The Soviet position was contrary to that of the majority of delegations and did not even warrant a reply. The Soviet revisionists wanted to sell their imperialist policy as a socialist policy but took fright when their mask was torn off. Their policy of aggression and expansion was generally known and condemned. They could not escape the responsibility they bore for it.

57. The CHAIRMAN appealed to the Committee to conduct its business in a spirit of harmony. He had no wish to criticize the views of any delegation, but the Committee must focus on the substance of its work. There had already been a general debate in plenary meeting in which delegations had had the opportunity to express their general views on the law of the sea. He urged all delegations to avoid bringing up matters which would occasion the exercise of the right of reply.

Organization of work

58. Mr. KEDADI (Tunisia) said that, although the general discussion had been useful because it enabled many delegations which had not been members of the sea-bed Committee to express their views, it was now necessary to find means of speeding up the work of the Second Committee. Since most of the draft articles submitted recently were very similar to those

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 sover-

eign 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 shelf² 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 eco-

nomie 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 reaffirmation, 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 seabed 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.

7th meeting

Wednesday, 17 July 1974, at 3.25 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

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

Territorial sea (concluded)

[Agenda item 2]

1. Mrs. WARNER (Trinidad and Tobago) said she wished to make some comments on item 2, concerning the territorial sea, and more particularly on documents A/CONF.62/C.2/L.3 to 6. The proposals submitted by Guyana (A/CONF.62/C.2/L.5) and Spain (A/CONF.62/C.2/L.6) were a praiseworthy attempt to identify the main trends that had emerged from the discussion. Her delegation would, however, have preferred to see the retention of the classical concept of the territorial sea and would therefore favour the formulation introduced by the delegation of India (A/CONF.62/C.2/L.4).

2. With regard to document A/CONF.62/C.2/L.3, the United Kingdom delegation was to be commended on its effort to present a concise treaty on the territorial sea and, in chapter II, part III, of that draft, to provide a more precise definition of the expression "innocent passage". Her delegation, however, shared the fears expressed by the delegation of the Republic of Korea at the 5th meeting that the formulation of article 16 was too restrictive and might therefore be dangerous. It was not inconceivable that the activities of a foreign ship traversing territorial waters might well be prejudicial to the peace, good order or security of a coastal State and might not fall within the scope of those provisions, for example, the launching of an aircraft from a non-military vessel. For the same reasons, article 18 was also too restrictive. A general saving clause should therefore be added which would confer on the coastal State the power to enact laws relating to innocent passage through its territorial sea. Such laws should not, however, in any way impede the passage of commercial and trading vessels. Her delegation, like that of Pakistan (see 4th meeting), had some reservations with regard to article 18, paragraph 5. She wondered on which authority responsibility would rest for determining the liability of a coastal State in cases where the owners of a foreign ship claimed that loss or damage had resulted from the action of a coastal State in the exercise of its sovereignty over its territorial sea. It must be made clear that that was not a matter for arbitration but for decisions in the courts of the coastal State concerned in accordance with its own laws and regulations. Although it was not explicitly stated, that was the proper inference to be drawn from the proposal.

3. She supported the provisions in article 19, but suggested that the word "may" should be replaced by the word "shall".

4. With respect to article 20, the passage of submarines or other underwater vessels which did not navigate on the surface of territorial waters could not be considered innocent. She would therefore prefer to see retained the formulation set forth in article 14, paragraph 6, of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone,¹ namely, "Submarines are required to navigate on the surface and show their flag", and the United Kingdom proposal amended to read "Submarines and other underwater vehicles are required to navigate on the surface and show their flag".

5. She supported the 12-nautical-mile limit for the territorial sea, provided, however, an exclusive economic zone was ac-

cepted and the concept of the continental shelf was retained. As her delegation had stated at the 23rd plenary meeting, it saw an organic link between the territorial sea, the exclusive economic zone and regional or other arrangements concerning preferential rights of access to the exclusive economic zones and zones of national jurisdiction. It would comment later on the issues of the exclusive economic zone, regional and sub-regional arrangements for access to the living resources, the continental shelf and on the issue of islands and the proposals submitted thereon.

6. Mr. ARIAS SCHREIBER (Peru) drew the Committee's attention to a very important question raised during the discussion, which had not been brought to its logical conclusion. It was common knowledge that the territorial sea had in the past been considered to be a narrow zone under the sovereignty of the coastal State for purposes mainly connected with neutrality and military defence. Modern industrial development and scientific and technological progress led countries to assume responsibility for what had been called the economic protection of States and ecological protection of the marine environment. Those opposing the territorial sea of 200 sea miles advanced in support of their argument the contention that, in the era of intercontinental missiles, it was useless to extend the limit of the territorial sea for military defence reasons, while they themselves sought to establish a 12-mile wide territorial sea on the pretext of national security. It was necessary to be logical and to discard the old concept of territorial sea in favour of a new concept adapted to contemporary reality.

7. The new concept, that of the national sea, should lay stress on economic and social requirements and be based on the need to promote the well-being of mankind. Territory *per se* did not give rise to rights which, on the other hand, derived from the presence of a population whose needs should be satisfied; and, as the territory and population together constituted a nation, it was rational that the name "national sea" should be given to the sea area of the coastal State. Only a national sea of that kind would make it possible to arrive at an agreement reconciling the sovereignty of coastal States over the seas adjacent to their coasts with the interests of other States, in respect both of international communications and of the right of access of land-locked States and other geographically disadvantaged countries.

8. The classical concept of the territorial sea would restrict national sovereignty to a very limited area of the adjacent sea and, in the final analysis, would be of benefit only to the great Powers which had adopted an adamant position on that subject for purposes of domination and maritime hegemony. Such an attitude would preclude a consensus and could, on the contrary, only result in similar intransigence from many other countries. Surely the peoples of the world expected their representatives to show imagination, goodwill and a spirit of justice in order to establish, for the utilization and exploitation of the seas, a legal order which would reconcile the rights and interests of the different nations instead of setting them against each other as had been the case in the past. He was gratified that other delegations, including those of Guyana, Madagascar and El Salvador, shared his point of view. Instead of becoming alarmed at the number of proposals in favour of a 200-mile territorial sea, the developing countries should welcome that trend, because only a measure of that kind would make it possible to protect their resources from the depredations of the great Powers. The land-locked and other disadvantaged coun-

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

tries should not forget that, if they wished to participate in the exploitation of the territorial sea, some resources must still exist, in other words, the territorial sea must be exploited rationally. Any other solution would only benefit the common adversaries of the developing countries.

9. His delegation supported the Philippine proposal that the 1958 Convention on the Territorial Sea and the Contiguous Zone should not be applicable to countries which had already decided to extend the limits of the territorial sea to 200 miles on the basis of reasonable criteria and with due regard to their own requirements.

Mr. Aguilar (Venezuela) took the Chair.

10. Mr. LE VAN LOI (Republic of Viet-Nam) said he would explain the position of his Government in the light of some proposals already submitted. Its position was based on the particular situation of Viet-Nam, which had a coastline extending over 1,300 nautical miles, included 201 islands and archipelagos and bordered on a sea which could be regarded as a semi-enclosed sea, because, in order to reach the high seas, it was necessary to pass through straits. The Viet-Nameese coast was very diversified: in the north and centre it was particularly indented and embraced many strings of islands, whereas it was very different in the south and south-east, with the Mekong delta, one of the largest rivers in Asia, which left heavy alluvial deposits on the coast. Those details showed that the Republic of Viet-Nam had important rights and obligations.

11. His delegation had given close attention to all the proposals submitted to the Committee and it supported the Guyanese proposal (A/CONF.62/C.2/L.5), which, however, would be improved by being made more specific; in particular, the "other applicable rules of international law", referred to in article 1, should be made more precise. The baselines should be drawn between the outermost points of the national territory, whether continental or insular. On that subject his delegation supported the statement made at the 5th meeting by the representative of Bangladesh, a country in a situation rather similar to that of Viet-Nam, on the methods to be used for drawing the baselines.

12. In conclusion, his delegation was prepared to participate in the informal consultations proposed and would certainly make its contribution.

13. Mr. TSHERING (Bhutan) recalled that, as his delegation had already stated at the 42nd plenary meeting, it was important to reach broad agreement on the question of the territorial sea. Some States had set the limits of their territorial seas unilaterally. As the international area began precisely where the national zone ended, the extension of the limits of the territorial sea to 200 nautical miles could only be of benefit to coastal States or geographically well-situated countries, and such a measure was inconsistent with the ideals of international co-operation, because the resources of the sea ought to benefit all members of the international community without exception. The provisions of articles 4 and 24 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone provided a reasonable basis for delimiting the territorial sea. His delegation was also prepared to support the establishment of a generally acceptable régime for the sea and the sea-bed and joint jurisdiction at the regional or subregional level.

14. Mr. GAJARDO (Chile) recalled that it had been decided at the 1st meeting of the Committee to focus efforts on the key articles of the convention. On that occasion his delegation had, *inter alia*, proposed limiting the length of statements in order to speed up the work, which was very behindhand, and it was particularly gratifying that the Venezuelan representative shared those views. More than two weeks had elapsed and the Committee had made little headway in its work. Delegations should consider specific proposals without restating already defined general positions or elaborating on details that could not be dealt with at the current stage. Above all, however, they

should refrain from introducing into the discussions political problems and bilateral issues which did not concern the Conference, were unrelated to its nature and outside its terms of reference, and were not on the agenda it had itself adopted. Without wishing to criticize anyone, he associated himself with the proposal of another delegation to the effect that the officers should not allow any statement to be made on matters outside the Conference's terms of reference, particularly on bilateral issues which were not pertinent to a multinational forum of that kind and discussion of which might cause the Conference to fail.

15. Mr. ROBLEH (Somalia) said he had already explained his country's position at the 42nd plenary meeting. He merely wished to express his full support of the statement made at the 4th meeting by the representative of Ecuador. With regard to the territorial sea, two trends could be noted, one favouring the 12-mile limit and the other the 200-mile limit. The coastal States that had deemed it necessary to extend their limit to 200 miles had done so for economic and security reasons.

16. The CHAIRMAN announced that a non-governmental organization, the International Chamber of Shipping (ICS), had asked to speak in the Second Committee. Referring to rule 65 of the rules of procedure he said that the text of the statement was very short and concerned the item before the Committee. If there were no objections, he would take it that the Committee authorized him to invite the representative of the International Chamber of Shipping to address the meeting.

17. Mr. OGISO (Japan) pointed out that his delegation had asked to be included in the list of speakers, but the Secretary of the Committee had said that the list was closed. At the current meeting, however, the Chairman was proposing to allow a non-governmental organization to speak on the same item. If the list of speakers was closed, he had no recollection that it included the organization in question. Furthermore, he wished to know whether some delegations were proposing to comment on the documents that had been submitted.

18. The CHAIRMAN recalled that it had been decided at the preceding meeting to close the discussion on item 2 and in general to limit participation in the discussion to countries that had not been members of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction or to countries which, though members of that Committee, had submitted new proposals. Furthermore, it had been agreed that delegations might also make comments on statements made by countries belonging to one or other of the two categories he had mentioned.

19. Accordingly, if there was no objection, he would call first on the representative of Japan to speak, and then on the representative of ICS.

20. Mr. OGISO (Japan) emphasized that much of what had been achieved in Geneva on the question of the territorial sea remained valid. The provisions of the texts submitted there could either be preserved or could at any rate serve as a basis for discussion, subject, if necessary, to changes of form. Consequently his delegation supported the first two articles of the text proposed by the United Kingdom (A/CONF.62/C.2/L.3). Similarly, with regard to the delimitation of the territorial sea in the case of two States opposite or adjacent to each other, article 12 of the Geneva Convention on the Territorial Sea and the Contiguous Zone provided a balanced solution, since it contained the objective criterion of the median line, while being sufficiently flexible to allow for special cases. For the same reasons, his delegation thought that the drafts submitted in documents A/CONF.62/C.2/L.8 and 9 were somewhat ambiguous and did not deal with the problem adequately.

21. Miss CALDER (International Chamber of Shipping), speaking at the invitation of the Chairman, said that ICS comprised the national associations of shipowners of 23 countries

and attached special importance to the question of the breadth of the territorial sea and the right of innocent passage.

22. It appeared that the majority of delegations were in favour of a 12-mile territorial limit. It was certainly essential to have a uniform breadth, but as the limits of national jurisdiction increased, so did the importance of safeguarding the interests of ships passing through territorial waters. If only for security reasons, it would in many cases be inconvenient for ships to sail more than 12 miles off-shore.

23. With regard to the right of innocent passage, the Geneva Convention on the Territorial Sea and the Contiguous Zone gave a generally satisfactory definition, but it might be desirable to clarify it. The basic principle could be retained while it was clearly specified that, save in a certain number of specific cases, such as the exercise of a warlike act or the take-off or landing of aircraft, all passage was innocent. Draft articles to that effect had already been submitted to the Committee.

24. Mr. GALINDO POHL (El Salvador) said he had listened with close attention to the statement of the representative of ICS. Since ICS was an important body comprising shipowners of 23 countries, and since the concern it felt with regard to international navigation was of general interest, he thought he should make some clarifications without delay to dispel what might be a misunderstanding. The representative of ICS had pointed to the need for ships enjoying the right of innocent passage to navigate as close to shore as possible. That was a matter that had been discussed at length when the 1958 Convention had been drafted. None of the proposals submitted to the Conference questioned the principles adopted at the time, according to which vessels exercising the right of innocent passage could navigate as close to shore as they wished and put into ports other than their port of destination in cases of danger or when the circumstances required it.

25. Mr. GODOY (Paraguay), referring to the Peruvian representative's statement on the misgivings aroused by the many proposals to extend the breadth of the territorial sea to 200 miles, wished to point out that his delegation, while accepting the establishment of a 200-mile economic zone in which navigation would be free and such activities as the laying of submarine cables and pipelines, overflight and scientific research could be exercised under the supervision of the coastal State, would assume that the resources of the sea and of the sea-bed would be protected and that the welfare and sustenance of the population of that State would thus be safeguarded. His delegation would never associate itself with the intentions of Powers which, while rejecting the concept of a 200-mile territorial sea, were motivated by aggressive designs or by other designs that, in one way or another, affected the security and legitimate interests of the developing countries, which depended on the resources of the sea for the well-being of their peoples. His country hoped eventually to benefit from those resources.

26. The CHAIRMAN said that the Committee had now concluded its general debate on the agenda item before it. Some further proposals would, however, still be submitted to it, including those of Nigeria.

27. The officers of the Committee were currently preparing a document summarizing the various trends which had emerged in the course of the preparatory work, the plenary meetings of the Conference and the meetings of the Committee. They had been working on the variants submitted by delegations to the sea-bed Committee in volume IV of its report (A/9021 and Corr.1 and 3), while referring to the proposals submitted to Sub-Committee II, which had been reproduced in volume III of that report. They had endeavoured to express the various views as clearly as possible, without making any additions and without attaching undue importance to questions of form.

28. In reply to a question by Mr. TREDINNICK (Bolivia), the CHAIRMAN explained that that work had been accomplished by the officers of the Committee and not by any group of States.

29. Replying to Mr. POLLARD (Guyana), the CHAIRMAN said he had hoped to submit that document to the Committee during the afternoon meeting. However despite the collaboration of the Secretariat, it had not yet been possible to finish it.

30. He suggested with the support of Mr. GALINDO POHL (El Salvador) and Mr. LUPINACCI (Uruguay) that, in order to expedite the work, the discussion should be held in informal meetings only when that work was concluded and the document had been translated into the various working languages.

31. Mr. KEDADI (Tunisia) expressed his approval of the method of work proposed by the Chairman, but suggested that the Committee should take advantage of the delay to hear speakers entered on the list for agenda item 3, which concerned the contiguous zone.

32. The CHAIRMAN noted that no delegation was ready to speak on the contiguous zone. In order to expedite the Committee's work, he suggested that it should hear the representative of Guyana, who wished to comment on the draft articles submitted by the United Kingdom (A/CONF.62/C.2/L.3).

33. Mr. POLLARD (Guyana) said his country entertained reservations regarding the draft articles submitted by the United Kingdom, in particular on chapter II, article 16. It was not clear to him whether the words "any threat or use of force in violation of the Charter of the United Nations" in paragraph 2 were meant to be an objective or a subjective criterion. In his view the provisions of the Charter on the question of the resort to force were quite clear. Such resort was legitimate only in cases of aggression and for purposes of legitimate defence. However, other States maintained that Article 51 of the Charter did not prohibit pre-emptive attacks. In the same way the use of force in pursuance of a United Nations decision was the subject of much controversy. In the circumstances the wording of article 16 seemed ambiguous and even dangerous. Similarly it might be wondered whether "justification under international law", a formula which raised the serious problem of the justification of any activities carried out in execution of a judgement of an arbitral tribunal, was an objective or subjective criterion and, in the latter case, what authority would determine whether there was justification. It would also appear from the text of paragraph 2 that the enumeration made there was exhaustive. He would have preferred an enumeration that was merely indicative, for it was not humanly possible to foresee all the situations that might arise. The same comment applied to the enumeration in paragraph 3 of the same article. His delegation would have difficulty in accepting subparagraphs (e) and (f) of paragraph 2. It might furthermore be wondered whether the acts listed in paragraph 2 were covered by the provisions of paragraph 3.

34. He considered the determination as to whether passage was innocent to be a purely subjective matter, on which only the coastal State was competent to decide. He therefore preferred the text of the Geneva Convention, which he proposed to support.

35. Finally, he pointed out that whereas paragraph 3 (b) referred to "prior authorization of the coastal State", paragraph 2 mentioned only "authorization from the coastal State". He wondered whether that distinction was fortuitous or deliberate. Would a special prior authorization be required in one case and assumed in the other? His delegation regarded such an interpretation as inadmissible in view of the serious nature of the activities mentioned in that paragraph.

The meeting rose at 4.55 p.m.

8th meeting

Thursday, 18 July 1974, at 10.45 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Organization of work

The CHAIRMAN announced that new draft articles had been submitted by Bulgaria, Czechoslovakia, the German Democratic Republic, Poland, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics, dealing with the question of straits used for international navigation (A/CONF.62/C.2/L.11) and by Nigeria, on the territorial sea (A/CONF.62/C.2/L.12). An informal document, Working Paper No. 1, had also been submitted. If there were no objections, he would close the meeting so that the Committee could proceed informally.

The meeting rose at 10.50 a.m.

9th meeting

Friday, 19 July 1974, at 11.25 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Organization of work

1. The CHAIRMAN informed the members that the officers of the Committee had decided to prepare a revision of Informal Working Paper No. 1, which would be considered at the meeting on Monday, 22 July.

Contiguous zone

[Agenda item 3]

2. Mr. TELLO (Mexico), supported by Mr. MBAYA (United Republic of Cameroon) and by Mr. LAWSON (Togo), suggested that the Committee postpone consideration of item 3 in view of the fact that there would be no further justification for having a contiguous zone if the concept of the patrimonial sea were included in the new law of the sea. He pointed out, moreover, that only one draft article on the contiguous zone had been submitted (A/9021 and Corr.1 and 3, vol. IV, sect. 3), so that if there were no agreement with regard to the elimination of the contiguous zone, it would perhaps be best to put the only existing text "on ice" and to take a decision at a later date.

3. Mr. JAGOTA (India) reminded the Committee that the proposal concerning the contiguous zone referred to by the representative of Mexico had been submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction by his delegation. With regard to the first alternative just proposed by Mexico, he indicated that he was not sure whether the concept of an economic zone or patrimonial sea would confer special jurisdiction on coastal States to prevent infringement of customs, fiscal, immigration or sanitation regulations; if so, the concept of a contiguous zone would be superfluous irrespective of whether the jurisdiction to be granted to the coastal State was broad or limited. If it was decided to maintain the contiguous zone as an area in which specific powers were to be exercised, it should be limited to a breadth not exceeding 18 nautical miles outside the territorial sea. He proposed, accordingly, that the blank spaces before the words "nautical miles" in his delegation's proposal, indicating the limits of the contiguous zone, should be completed by the number 30. The second alternative proposed by Mexico was also agreeable to him.

4. Mr. DJALAL (Indonesia) agreed that the contiguous zone would lose its importance if the idea of an economic zone were approved, but since the latter would essentially relate to questions of economics and marine resources, his delegation pre-

ferred that the concept of the contiguous zone should not be discarded completely, since it involved other powers of the coastal State with regard to customs, fiscal and police control, and sanitation and immigration regulations.

5. Mr. ROSENNE (Israel) said that his delegation could see no reason to perpetuate the concept of the contiguous zone. In the context of the new law of the sea, it would remain applicable only in the event that no agreement was reached on extending the breadth of the territorial sea to 12 nautical miles or on establishing a maritime zone in which the coastal State would enjoy various exclusive rights, especially of an economic nature.

6. The Israeli delegation believed that if a State decided not to extend its territorial sea up to the maximum agreed limit, but still deemed it necessary to enforce its regulations with regard to taxation, customs or immigration up to that limit, it should be able to do so. If a State was entitled to determine the outer limit of its sovereignty up to a distance of 12 nautical miles, it obviously could also elect to exercise lesser powers in that same zone.

7. In view of those considerations, the Israeli delegation was inclined to agree that consideration of the item should be deferred.

8. Mr. ABDEL HAMID (Egypt) said that his delegation had already referred to the necessity of maintaining the concept of the contiguous zone. In that connexion, it should be noted that Egyptian legislation provided for a contiguous zone of 6 miles, since in areas of heavy maritime traffic the coastal State should have facilities for enforcing its regulations.

9. The jurisdiction implied by the concept of the contiguous zone was completely different from that applicable to the economic zone, and there were practical reasons for maintaining the former concept.

10. Mr. NJENGA (Kenya) said that the role envisaged for the contiguous zone in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone¹ was quite limited and was serviceable in the context of a territorial sea of 12 miles. On the other hand, if the new concept of an economic zone extending to 200 miles were accepted, the contiguous zone would become totally useless, and his delegation was therefore willing

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

to postpone consideration of that item until after other related items had been discussed.

11. Mr. ARAIM (Iraq) stated that the concept of the contiguous zone differed from that of the economic zone. While he did not oppose the proposals to postpone consideration of the question of the contiguous zone until after the question of the economic zone had been discussed, he pointed out that the concept of the economic zone related only to jurisdiction over resources. The concept of the contiguous zone, on the other hand, involved the jurisdiction of the coastal State in regard to customs, fiscal, sanitation and immigration regulations.

12. Mr. MEDJAD (Algeria) agreed with the delegation of Mexico that the idea of a contiguous zone was an anachronism and could be confused with the concepts of a territorial sea or an economic zone. However, having listened to the statement by the representative of India, and bearing in mind the level of pollution in the Mediterranean, he felt that his country needed strong regulations to protect the marine environment adjacent to its coasts. Consequently, it was preferable to maintain the concept of a contiguous zone, but to postpone discussion of the subject until the concept of the economic zone had been considered.

13. Mr. POLLARD (Guyana) asked whether the proposal by the representative of Mexico did not come under the provisions of rule 28 of the rules of procedure.

14. The CHAIRMAN replied that the delegation of Mexico had not made a formal proposal and that rule 28 therefore did not apply.

15. Mr. KHARAS (Pakistan) said that the 1958 Convention had not envisaged the concept of a contiguous zone with regard to resources but only in relation to national security, fiscal and customs control, and sanitation and immigration regulations. It was not clear, therefore, whether jurisdiction with regard to both resources and administrative matters would be embodied in the concept of an economic zone. Consequently, he felt that it would be preferable to consider the item after the question of the economic zone had been discussed.

16. Mr. MBAYA (United Republic of Cameroon) said that the extension of the zone of national jurisdiction—territorial sea, patrimonial sea or an economic zone of 200 nautical miles—rendered the concept of a contiguous zone void and superfluous. First of all, the contiguous zone, which, like the economic zone or patrimonial sea, began physically at the outer limit of the territorial sea, was confused with the latter; and secondly, the two concepts had the same socio-economic basis and the same objective: the economic and social development of the coastal State. Moreover, on that level the concept of a contiguous zone was technically inferior to that of an economic zone, for the latter had a definitely positive aspect, in that it aimed at the exclusive exploitation by the coastal State of the riches of the sea adjacent to its coasts with a view to increasing its economic development, whereas the former merely had a negative role, that of protecting the economy of the coastal State.

17. Thus, from whichever angle the problem was viewed, the conclusion was the same: the concept of a contiguous zone had had its day.

18. Mr. GALINDO POHL (El Salvador) said that the concept of a contiguous zone was historically justified at the time when the coastal State was granted a form of jurisdiction over and above the old 3-mile territorial sea. The new concepts of a territorial sea of 12 miles or an economic zone of 200 miles called for a decision as to whether the contiguous zone would be absorbed into those spaces or whether a zone of jurisdiction would have to be established in addition to the territorial sea or the economic zone. As some delegations had proposed a special régime for navigation in the economic zone, it remained to be seen whether the idea of a contiguous zone could be embodied in that concept. For all those reasons, he felt that it

would be preferable to defer consideration of the question of a contiguous zone until the question of an economic zone had been discussed.

19. Mr. AL-NIMER (Bahrain) said that the contiguous zone had a specific purpose in relation to national security, fiscal and customs control and sanitation and immigration regulations, and the concept was not incompatible with the concepts of a territorial sea or an economic zone. On the other hand, all items were being considered in the order in which they appeared on the Committee's agenda and that order should be followed. He therefore felt that consideration of item 3 should be completed and that the conclusions of the discussion could subsequently be co-ordinated with those resulting from consideration of the question of the economic zone.

20. Mr. ARIAS SCHREIBER (Peru) said that, although the concept of a contiguous zone was bound to disappear as the result of the development of the law of the sea, the comments of the representative of India with regard to the possible inclusion of that concept in the idea of a territorial sea or an economic zone should not be ignored. The matter should be given careful consideration because it pertained to the residual rights of the coastal State in wide zones of national jurisdiction. He felt that it was reasonable to postpone discussion on it until the question of the economic zone had been considered.

21. Mr. AL-SALEM AL-SABAH (Kuwait) supported the Mexican proposal to postpone consideration of item 3, and said that he could not accept the view that the contiguous zone was redundant. His country had set a 12-mile limit to its territorial sea by government decree and reserved the right in the future to claim a contiguous zone. He was therefore opposed to deletion of the item from the agenda.

22. Mr. FATTAL (Lebanon) said that the economic zone, as it was understood by most representatives, extended beyond the contiguous zone; the establishment of an economic zone would even mean the end of the concept of the territorial sea. The coastal State would have greater responsibilities in the economic zone than it currently had in the contiguous zone: it would have to exercise control over customs, fiscal arrangements, sanitation and police matters and to guarantee protection to workers; in short, it would have to ensure the rule of law in that zone. The concept of a contiguous zone would thus become superfluous and the concept of hot pursuit would have to be reviewed.

23. Mr. OGUNDERE (Nigeria) said his delegation did not consider that the exercise of powers over customs, fiscal matters, sanitation and immigration were no longer needed or were useless in the contiguous zone: rather, they would increase as a result of exploitation of the resources. Furthermore, there was the problem of pollution of the marine environment. His country had extended its territorial sea, by decree, to 30 nautical miles, and the draft articles on the territorial sea submitted by his delegation in document A/CONF.62/C.2/L.12 lent support to those calling for a further extension of the territorial sea. The concept of the economic zone should be discussed both from the point of view of exploitation of its resources and in relation to customs, fiscal, sanitation and policing powers, inasmuch as those powers in the contiguous zone remained in full force.

24. Mr. LACLETA Y MUÑOZ (Spain) said that the contiguous zone used to be considered as extending beyond the territorial sea, but that was an outdated concept. It was recognized in the 1958 Geneva Convention as a zone established for specific purposes, in which the coastal State had special powers. In that context, the contiguous zone should not be eliminated. There were three possibilities: to make the economic zone an autonomous entity by reason of its specific purposes in relation to a territorial sea of limited breadth; to consider the contiguous zone as a special strip in the economic zone, a possibility that would seem more acceptable than the

first one, which did not allow for combining the different powers; or to have a broad territorial sea with several régimes, in which case the contiguous zone would come to be regarded as one of the special régimes.

25. Mr. AL-SALEM AL-SABAH (Kuwait) moved the adjournment of the debate.

26. The CHAIRMAN said that in accordance with rule 28 of the rules of procedure he would invite two representatives to speak in favour of, and two against, the motion.

27. Mr. TELLO (Mexico) supported the motion of the representative of Kuwait and proposed that Informal Working Paper No. 2 should include the text of the only existing draft on the subject, which appeared in document A/9021 and Corr.1 and 3, volume IV, section 3, and that item 4 should be taken up at the next meeting.

28. Mr. ARIAS SCHREIBER (Peru) supported the motion of Kuwait and said that Informal Working Paper No. 2 should not only include the Indian draft, but should also state that the countries that supported a territorial sea of 200 miles considered that the contiguous zone was unnecessary and would be absorbed within the jurisdiction of the coastal State.

29. Mr. LIMPO SERRA (Portugal) opposed the motion by the representative of Kuwait and said that he would prefer the debate on item 3 to continue.

30. Mr. AL-NIMBER (Bahrain) opposed the motion made by the representative of Kuwait. The whole meeting had been devoted to discussing the postponement of the debate and he felt that the item should continue to be discussed, particularly as it related to the powers of the State in the contiguous zone.

31. After a procedural discussion in which Mr. AL-SALEM AL-SABAH (Kuwait) and Mr. MOVCHAN (Union of Soviet Socialist Republics) took part, the CHAIRMAN said that, since there was no consensus, the Committee should vote on the motion to adjourn the debate. An adjournment would not preclude submission of proposals on the item at any time.

The motion was adopted by 63 votes to 17, with 26 abstentions.

32. The CHAIRMAN said that the Committee would return to the item on the contiguous zone before dealing with agenda item 8, on the question of the high seas.

The meeting rose at 1.05 p.m.

10th meeting

Friday, 19 July 1974, at 3.30 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Straits used for international navigation

[Agenda item 4]

The CHAIRMAN noted that no representative had asked to speak on the item under consideration. He suggested that the meeting should be adjourned.

It was so decided.

The meeting rose at 3.35 p.m.

11th meeting

Monday, 22 July 1974, at 12 noon

Chairman: Mr. Andrés AGUILAR (Venezuela).

Straits used for international navigation (continued)

[Agenda item 4]

1. Mr. LACLETA Y MUÑOZ (Spain) pointed out that his delegation was one of the sponsors of the draft articles on navigation through the territorial sea, including straits used for international navigation, submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (A/9021 and Corr.1 and 3, vol. III, sect. 6). Also, agenda item 4.1, on innocent passage through straits used for international navigation, was closely related to item 2.4, on innocent passage in the territorial sea. Under item 4.1, the Second Committee would consider how the principles examined during consideration of item 2.4 would apply to particular situations. To that end, the revised text of Informal Working Paper No. 1, which had been submitted by the Chairman, should be available to the Committee, since the Committee could not consider particular cases without having an over-all view of the question.

2. The CHAIRMAN said that he would consult the officers of the Committee to obtain their views on the revised version of

the working paper he had submitted, and that delegations were clearly entitled to refer, in their interventions, to items related to the matter under consideration, and specifically, at that juncture, to item 2.4.

3. Mr. KAZEMI (Iran) referred to the earlier statement of the views of his delegation on the question of straits used for international navigation at the 23rd plenary meeting, in which it had noted, first, that the sovereignty of the coastal State in its territorial sea was subject only to the exercise of the right of innocent passage of ships; secondly, that passage through straits used for international navigation must not affect the legal status of the territorial sea when the straits were situated within the territorial sea of one or more States; thirdly, that rules could be devised to safeguard transit through the straits while taking into account the need to protect the security and other interests of the coastal State.

4. The Iranian delegation considered that some of the draft articles before the Committee tended to be prejudicial to the legal status of that part of the territorial sea which constituted a strait used for international navigation. Moreover, any pro-

posed rules regarding passage through those straits should be based on existing rules, particularly those contained in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.¹ The breadth of the territorial sea, whether it was 3, 6 or 12 nautical miles, did not affect the actual passage of ships through the navigable channels of certain straits. The system for separating traffic developed by the Inter-Governmental Maritime Consultative Organization (IMCO) revealed that the navigable channels of a certain number of straits were located 3 nautical miles or even less from the coast. Moreover, at least in times of peace, coastal States had seldom imposed restrictions on transit through straits used for international navigation.

5. In the light of the foregoing considerations, the Iranian delegation considered that any draft articles concerning straits should take into account the nature and scope of the coastal State's sovereignty over its territorial sea and should not prejudice its security and good order; however, while certain exceptions to the sovereignty of the coastal State might be envisaged in the interest of international trade and communication, the draft articles should in no way alter the status of the territorial sea encompassing the straits.

6. Mr. FERGO (Denmark) pointed out that Denmark, as a seafaring nation with international straits within its territorial waters, was concerned with the rules applicable to international straits. The existing rules governing innocent passage through the territorial sea, which were codified in the Convention on the Territorial Sea and the Contiguous Zone, were the result of a delicate balance between the different interests of the coastal State and international navigation. In the case of straits, the interests of international navigation were even more protected than in other parts of the territorial sea. Consequently, there was no need to revise the present régime of innocent passage through international straits.

7. A general agreement establishing a maximum limit of 12 miles for the territorial sea would result in the creation of a large number of new straits. Several delegations had pointed out that there was no justification for restricting navigation through, and overflight over, vital straits that had long been considered as high seas. In the case of "new" straits up to a breadth of 24 miles, there might be a need for a new régime of free transit passage. Such a régime should take due account of the interests of coastal States, particularly with respect to security and protection against pollution. On the other hand, his delegation failed to see the need to change the rules of innocent passage through straits less than 6 miles wide, where the right of free passage and overflight had never existed. On the contrary, it could be argued that the increased size and speed of ships as well as the increased traffic in straits justified giving increased consideration to the interest of the coastal State.

8. The problem could be solved by maintaining the existing rules of innocent passage through international straits of less than 6 miles and establishing a new régime of "transit passage" through new wide straits, which would emerge as a result of establishing a maximum limit of 12 miles for the territorial sea. The Danish delegation had, in conjunction with the Finnish delegation, submitted a draft article (A/CONF.62/C.2/L.15) reflecting that idea in the form of an amendment to the United Kingdom proposal in document A/CONF.62/C.2/L.3.

9. He also stressed the fact that some straits, such as the Danish straits leading to the Baltic Sea, had never been subject to the right of free passage but had been under a special régime serving the interests of both the coastal State and the international community; such a type of arrangement should remain in effect.

10. Turning to the draft articles submitted by the United Kingdom, he stated that chapter III, article 1, did not reflect the obvious difference between straits up to a breadth of

24 miles and other straits where navigation took place a few miles from the coast, because of the narrow breadth of such straits. The amendment submitted by Denmark and Finland could therefore be considered as a variant of the United Kingdom text. He suggested also that it might be wiser to deal elsewhere with the question of overflight of straits.

11. The Danish delegation also believed that the wording of chapter III, article 10, required some clarification. It preferred the wording of article 1, paragraph 3 (c) in document A/CONF.62/C.2/L.11, submitted by Bulgaria, Czechoslovakia, the German Democratic Republic, Poland, the Ukrainian SSR and the USSR. With those reservations and on the understanding that the proposed régime for transit passage set forth in document A/CONF.62/C.2/L.3 was limited to new wide straits, the Danish delegation considered the draft articles submitted by the United Kingdom acceptable.

12. With reference to document A/CONF.62/C.2/L.11, which stated in article 1, paragraph 2 (f) that the "coastal State shall not place in the straits any installations which could interfere with or hinder the transit of ships", he pointed out that Denmark had geographically the character of an island country, the main island being separated from the other main parts of the country, as well as from neighbouring Sweden, by narrow international straits. It was of vital social and economic importance for Denmark and its neighbouring countries to be able to build bridges or tunnels across those straits, and the Danish Parliament had already taken a decision in principle to that effect. Existing plans took full account of the obligation not to hamper the free passage of ships in transit. His delegation took it that the reference in article 1, paragraph 2 (f) to the placement of installations in straits did not modify the right of coastal States to build traffic links of the nature referred to, on the understanding that transit through the straits would be able to continue unhampered.

13. Mr. MANNER (Finland) said that the proposals concerning straits used for international navigation stemmed from a concern lest the approval and application of a new rule on the maximum breadth of 12 nautical miles for the territorial sea, and the consequent extension of the territorial waters of the coastal States, might, in some instances, lead to a change in the prerequisites for international navigation previously based upon the principle of freedom of the high seas. Finland, a maritime nation whose economy was essentially dependent on freedom of international navigation, shared that concern and was ready in principle to support such proposals. However, its final attitude would depend upon whether his delegation's comments were taken into account.

14. The proposals under consideration concerned straits used for international navigation between one part of the high seas and another. How should the expression "used for international navigation" be interpreted? It would seem that the proposals applied only to straits in which freedom of navigation had previously been based on the principle of the freedom of the high seas. However, his delegation doubted whether that expression in itself would be enough to restrict the application of the proposed provisions to those instances where passage through the strait had earlier been based upon the principle of freedom of the seas. Assuming that such doubts were justified, note should be taken of the fact that none of the texts submitted so far made an express exception for circumstances where the breadth of the territorial waters in a strait connecting two parts of the high seas would remain unchanged, in spite of the new provisions, and where the prerequisites for transit passage would thus also remain unchanged. Such was the case especially with regard to straits within or leading to enclosed sea areas, and being either completely within the territory of one coastal State, or passing through the territorial seas of States which already bordered on each other. If no special rules had been agreed upon, the provisions concerning innocent

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

passage were applicable and could be applied also in the future. The situation had not changed and therefore there was no reason to require the opening of such a strait to free passage, in other words to place the strait under the régime of the high seas as far as navigation was concerned. If the omission were due purely to an oversight, it could easily be corrected by adding an appropriate provision to that effect.

15. If, however, the intention was to alter the existing status of straits, the change in status, which was not indispensable in order to safeguard the interests of merchant shipping and was not a consequence of measures taken by the coastal States concerned, would interfere with the vital interests of those States and disregard their right to equal treatment. Neither fishing nor other peaceful uses of the high seas required the proposed change in the *status quo* of straits traditionally used for international navigation based on the rules of innocent passage. Particularly in the case of States pursuing a policy of neutrality, such as Finland, any such measure could lead to unfortunate consequences.

16. In the view of his delegation, it was of utmost importance that the above-mentioned points of view be duly taken into account in the final drafting of the articles concerning navigation through international straits. The defects of the proposed articles were particularly serious in respect of straits which were narrow, and of which the internal waters constituted a large part. A practical remedy would be to provide that the minimum breadth of straits in which freedom of passage would apply should be 6 nautical miles.

17. Mr. DUDGEON (United Kingdom) said that his delegation regarded agenda item 4, currently under consideration, as one of the most important questions facing the Conference. Acceptance of a territorial sea of 12 miles would result in a large number of straits forming essential links for international navigation, both by sea and air, ceasing to have a strip of high seas down the middle. Hence the need to ensure that unrestricted navigation through those vital links in the world network of communications should remain available for use by the international community. His delegation had been gratified by the amount of interest shown in chapter III of its draft (A/CONF.62/C.2/L.3). He would like to reply to some very pertinent questions which had been put to it in the course of informal discussions.

18. Article I set out the concept of transit passage through straits connecting two parts of the high seas. The concept his delegation had tried to describe corresponded to what it believed to be the best international practice at that time. It proposed that ships and aircraft exercising the right of transit passage should not be impeded or hampered during their passage. At the same time the right was given "solely for the purpose of continuous and expeditious transit of the strait".

19. In the context of the geographical situations to which that right would apply, his delegation had first and foremost in mind the strait linking one part of the high seas with another part of the high seas. However, as particular straits were called by other names, such as "channel" or "passage", and often did not begin at a precise line, paragraph 3 of article I stipulated that the article applied to "any strait or other stretch of water whatever its geographical name", as long as it was sea.

20. His delegation also had in mind the situation of the long strait which had more than one country bordering one side of the strait. Assuming a strait which had two countries on the western side, States A and B, and one country on the eastern side, State C, the United Kingdom draft proposed, first, a right of transit should the ship or aircraft be going all the way northwards or southwards through the strait; secondly, a right of transit if the ship or aircraft was proceeding down the first part of the strait between States A and C with a view to calling at a port or airport of State B. Such was the purpose of the

words "or a State bordering the strait" at the end of article I, paragraph 2.

21. Paragraph 4 of article I concerned two exceptional cases. The first was what might be described as a broad strait: if the strait was rather more than 24 miles wide, and had a good and wide enough high-seas route down the middle, it was unnecessary to provide a special right of transit passage since ships and aircraft could navigate on the high seas through the strait. The second case was the not infrequent one of a strait formed by an island lying less than 24 miles off the coast of a State. There again his delegation saw insufficient justification for according the right of transit passage between the island and the coast of the State, so long as an equally suitable high seas route was available on the seaward side of the island.

22. Article 2 proposed very stringent restrictions upon what ships and aircraft might do while exercising the right of transit passage. Ships and aircraft must not engage in any activities other than those which were part of their normal passage. They also had to comply with generally accepted standards for navigation and safety, thus providing safeguards for the straits States.

23. Articles 3 and 4 set out rights in relation to transit passage of States that bordered on straits used for international navigation. Article 3 recognized the value of sea-lanes and traffic separation schemes wherever it was necessary to promote the safe passage of ships, especially in the light of the volume of sea traffic passing through the waters of straits. The United Kingdom proposed that such traffic separation schemes be approved by IMCO before being brought into operation. IMCO had, in fact, already approved a scheme of that kind for the Straits of Dover, which was currently operating, and no State could unilaterally alter the regulations with which all mariners were required to comply. Furthermore, article 4 made express provision that any State bordering on a strait could prescribe laws and regulations in order to give full effect to traffic separation schemes for navigation in straits. It also provided a basis for the straits State to take appropriate powers to control discharge of oil or other noxious substances into the strait by making laws and regulations. Foreign ships exercising the right of transit passage would have to conform with the regulations; should they fail to comply, the possibility of legal proceedings would arise in the case of merchant vessels. In the case of warships and other vessels entitled to sovereign immunity, article 4, paragraph 5, and article 7 stipulated that the flag-State was directly responsible for damage caused by non-compliance with such laws and regulations on the part of one of its ships. Namely, there would be liability on the international level or, in other words, State responsibility.

24. With regard to article 8, and in order to clarify the scope of paragraph 1, about which a number of questions had been asked, the United Kingdom delegation pointed out that the article concerned three geographical cases: that of a strait used for international navigation linking a part of the high seas with the territorial sea of a State; that of a strait lying between an island and the mainland of the coastal State, where, in accordance with the provisions of article I, paragraph 4 (b), the right of transit passage was not involved; and lastly, that of a broad strait through which a high seas corridor ran down the middle. In those three cases, the United Kingdom delegation considered that there were no grounds to provide for the right of transit passage. Instead, it was proposed that the régime of innocent passage as described in chapter II of the draft should apply, subject to the other provisions of article 8. There were, moreover, two exceptional cases not arising from article 8, involving, in the first instance, a ship crossing from one side of a strait to the other and, in the second instance, a ship going along part of a strait bordered by a single State on passage to a port of that State. In those two cases, the United Kingdom delegation considered that the régime of innocent passage should apply and not that of transit passage.

25. The purpose of article 10 was to preserve the effect of the provisions in the existing international instruments relating to particular straits.

26. In conclusion, he stated that his delegation had endeavoured to find a middle way in its draft between the interests of the international community as a whole and the legitimate concerns of the straits States. He hoped that the explanations that he had given would enable the Committee to form a better understanding of the effect of the provisions embodied in the draft proposals.

27. Mr. DE ALWIS (Sri Lanka) said that he wished to identify those elements that were common to the various formulations which had been put forward with regard to straits and should be recognized or included in the articles relating to that question, whilst at the same time adopting a flexible approach to the controversial elements, since he considered that the work of the Committee must essentially be an exercise in reconciliation.

28. The problem of straits forming part of the territorial sea lay in finding an equitable balance between the security and the economic interests of the States bordering on straits and the right of transit passage of ships which were of a vital importance to the world economy and to international peace and security. In that connexion, it was necessary, instead of invoking strictly abstract or legal concepts, to attempt to find a practical and equitable solution by adopting a realistic and objective attitude.

29. Every State bordering on a strait within its territorial sea had a legitimate right not only to safeguard the vital interests connected with its security, but also to ensure that no damage resulting from pollution or from some accident affected its marine environment; and in such an eventuality, it must be provided with adequate compensation for damage. With regard to pollution, it was gratifying to observe that that issue did not give rise to any major difficulties of substance. With reference to the effects of the passage of vessels on the security interests of the coastal State, his delegation considered that a distinction should be made between the passage of merchant vessels and that of warships. As a developing country with an export-import economy, desirous of increasing its share in an expanding world trade, Sri Lanka supported the view that it was in the interests of the world economy that passage of merchant vessels should be unimpeded except in circumstances such as *force majeure* or navigational hazards, and that the right to transit passage should be recognized for all ships without discrimination as to flag, point of origin or destination. That involved the continuance of customary sea lanes for security reasons. The passage of merchant vessels, which should be

presumed to be innocent, must nevertheless be in conformity with the coastal State's laws and regulations with regard to safeguards against damage to its marine environment and its security requirements. That legitimate right of international commercial navigation had not been opposed by coastal States bordering on straits; indeed, they had given indications that they were inclined to show flexibility on that aspect of navigation.

30. On the other hand, the question of the passage of military vessels gave rise to divergent views, although they were not necessarily irreconcilable. The extension of the territorial sea to a breadth of 12 miles was designed to accommodate the justifiable concerns of the coastal States to ensure their national security. A coastal State bordering on international straits could not be denied the safeguards granted to other coastal States, and its security interests could not be endangered merely because straits used for international navigation existed within its territorial waters. It would be unreasonable to expect the State concerned not to react to the passage along its coasts of an armada of military vessels which might have hostile intentions towards it. Sri Lanka, which was committed to a nuclear-free zone and to zones of peace, obviously could not advocate or encourage the passage of foreign warships. Being not unmindful, however, of current realities, the delegation of Sri Lanka was inclined to adopt a flexible attitude in that respect, subject to certain safeguards in the interests of preserving coastal State security. Furthermore, the supporters of free transit through straits were not unmindful of the legitimate fears of coastal States, since they had already suggested certain codes of self-discipline in the exercise of the right of passage, such as refraining from any acts which might be deemed prejudicial to the peace, good order or security of a coastal State. Sri Lanka, for its part, considered that it would not be unreasonable to include in the new régime provisions providing first, that warships must observe the laws and regulations of the coastal State applicable to the passage of other ships; secondly, that prior notification of the passage of any warship, specifying that such passage would take place within predetermined time-limits without necessarily indicating the actual time of passage, must be given to the coastal State, which could designate the sea lanes to be used; thirdly, that if a warship failed to comply with the laws and regulations of the coastal State, it could be required to leave the straits immediately along a route to be designated by the coastal State concerned; and, fourthly, that where more than one coastal State was involved, those States should be required to co-operate in establishing a joint administration with a view to avoiding obstacles to transit deriving from a lack of co-ordination on the part of one of them.

The meeting rose at 12.55 p.m.

12th meeting

Monday, 22 July 1974, at 4.25 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Straits used for international navigation (*continued*)

[*Agenda item 4*]

1. Mr. KOLOSOVSKY (Union of Soviet Socialist Republics), referring to the draft articles on straits used for international navigation (A/CONF.62/C.2/L.11), of which his delegation was a sponsor, underlined the importance of the principle contained in article 1, which provided that all ships in transit would enjoy equal freedom of navigation for the pur-

pose of transit passage between straits used for international navigation between two parts of the high seas. That principle was essential for maintaining the benefits derived from the tremendous development of international trade in recent years. That trade, in which the developing countries had an increasing share, was carried on more and more through straits used for international navigation. The adoption of the principle of innocent passage with regard to those straits would entail the risk of hampering international trade, to the serious detriment of cer-

tain countries and the international community as a whole. In particular, it would be prejudicial to the land-locked countries, since the right of access to the high seas would be practically worthless without the freedom to navigate through straits. The Soviet Union attached special importance to that freedom, since its only access to the Atlantic and the Far East was through straits, and its coastal shipping linking the far-flung points of its extensive territory passed through a number of straits.

2. The USSR recognized the need to protect the security of coastal States bordering on straits used for international navigation between one part of the high sea and another, but it also believed that the security and other interests of countries that used those straits, which comprised the majority, should also be taken into account. The security of the USSR depended upon communications by sea and through straits. Consequently, his delegation could not agree that matters relating to navigation through straits used for international navigation admitted unilateral solutions. Attempts to modify the traditional régime or to limit transit through those straits were against the interests of the international community.

3. Draft article 2 referred to straits which connected the high seas with the territorial sea of one or more foreign States and which were used for international navigation. The principle of innocent passage applied to those straits.

4. Article 3 established the equal freedom of overflight for those straits whose air space had been traditionally used by foreign aircraft for flying from one part of the high seas to another.

5. In preparing articles 1 and 3, special attention had been paid to the interests of the coastal State. Ships using the straits were placed under the obligation not to cause any threat to the security of coastal States, various acts were prohibited, strict compliance with international rules was required, and liability for damage caused to the coastal State was imposed upon the owner of the ship or aircraft or the person causing the damage, or the flag State or State of registry.

6. The draft articles demonstrated the willingness of their sponsors to work on the basis of co-operation and the conciliation of the diverse interests. He expressed his conviction that it would be possible to reach agreement on such a basis.

7. Mr. GOERNER (German Democratic Republic) said that, because of its geographical situation, his country was obliged to give special attention to the question of the legal régime of straits. Straits connecting two parts of the high seas and used for international navigation were of vital interest to all States. International navigation depended especially on that category of straits, although they constituted a relatively small fraction of all existing straits. There existed at present a régime which generally guaranteed free transit for the ships of all States and constituted a well-balanced regulation of the interests both of the users of those straits and the States adjacent to them. An important task of the new convention on the law of the sea would be to guarantee that all ships would enjoy equal freedom of navigation for the purpose of transit passage through such straits. Passage through those straits was an inherent part of the principle of freedom of the seas and was a generally recognized rule of international law. The decisive factor in determining the legal régime of straits was not their breadth, but the fact that they connected two parts of the high seas and were used for international navigation. In the interest of protecting international air transport, his delegation believed that the new convention on the law of the sea would have to reaffirm the principle that all aircraft should enjoy equal freedom of overflight over those straits whose air space had been traditionally used by foreign aircraft flying between two parts of the high seas.

8. If a coastal State bordering on a strait linking two parts of the high seas extended its territorial sea to the maximum

breadth of 12 nautical miles so that the strait was included in the State's territorial sea, that must not lead to a change in the existing régime in and over those straits. It was not in the legitimate interests of the international community of States or among the principles of international law as laid down in the United Nations Charter that a coastal State should take decisions on its own concerning world sea routes or obstruct the transit of a given State's ships or of a given category of ships through straits connecting two parts of the high seas. On the other hand, any straits State had a legitimate right to ensure respect for its security, territorial inviolability and political independence, and for other legitimate rights such as that of preventing pollution of its coasts. His delegation therefore favoured inclusion in rules relating to passage through straits of detailed provisions for the protection of the legitimate interests of coastal States, provisions which should be strictly observed by users of the straits. There should also be a provision to the effect that the users of the straits would be liable to the coastal State for any damage they caused to it, its citizens or its juridical persons.

9. His delegation believed that in straits which led from the high seas to the territorial sea of one or more foreign States, a provision to the effect that the principle of innocent passage should apply to all ships would be justified. Although such straits were not as important for the international community as straits connecting two parts of the high seas, they could be of great interest for the navigation of individual States, and it therefore seemed necessary to provide that straits States would not suspend innocent passage through them.

10. His delegation favoured a well-balanced consideration of the interests of flag States and of States bordering on straits used for international navigation; it believed that the draft articles contained in document A/CONF. 62/C.2/L.11, of which the German Democratic Republic was a sponsor, were fully in line with that objective, and hoped that on the basis of those draft articles a constructive solution corresponding to the interests of all States could be found.

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

11. Mr. TORRAS DE LA LUZ (Cuba) said that his country favoured the maintenance of freedom of navigation and overflight during the transit of ships and aircraft through and over straits used for those purposes, a position which had its origin in Cuba's particular situation and which was vindicated by historical experience. Because of the aggressive policy towards Cuba which the United States had pursued since the beginning of the Cuban Revolution, principally in the seas surrounding Cuba, it was vitally important for his country, from the standpoint of both economics and defence, that there should be a guarantee that maritime communications with other continents could not be cut off; that was an interest which did not conflict with the interests of other developing countries engaged in defending their sovereignty and independence.

12. So-called "innocent passage" gave coastal States the possibility of obstructing, on various pretexts, transit through the strait on which they bordered. The Caribbean, in view of its characteristics, could thus again come under United States domination and that would put Cuba and other islands in a difficult position, an experience which was not confined to the Caribbean. Moreover, there were numerous military alliances, dominated by the imperialist Powers, which in practice guaranteed those Powers freedom of movement for their fleets through almost all straits, whatever the régime of passage. It should be added that there were no fewer than 15 straits and channels, including some which were important for international navigation, lying between two colonial territories, or with at least one coast occupied by such territories.

13. Some Governments of developing countries engaged in consolidating their independence believed that the régime of "innocent passage" through straits up to 24 miles wide was a

guarantee of their sovereignty, but what really guaranteed the sovereignty of a country was not "innocent" or free passage but a Government that was stable and fully independent, rooted deep in the hearts of the revolutionary people and that had the solidarity and support of the progressive countries and forces. When Cuba, which had straits on every side, maintained freedom of transit, it did not give up one iota of its sovereignty, which was guaranteed by its revolutionary Government and by its entire people, as had been shown at those momentous times when its very survival was at stake.

14. It was in the interest of all countries that the passage of ships and flight of aircraft through or over their straits should not in any way prejudice their security, pollute their seas, endanger navigation or damage coastal States with impunity. That could be guaranteed without the necessity of establishing so-called right of "innocent passage". It was necessary to ensure that the international legal régime of the seas was strong, accepted by the overwhelming majority of States, and defended through the united action of revolutionary and anti-imperialist Governments.

15. Mr. NYAMDO (Mongolia) said that his country's position on the item under consideration was based mainly on its strict adherence to freedom of international navigation as a fundamental principle of contemporary international law. At the same time, it fully shared the legitimate concern of coastal States, especially with regard to their security, conservation of their resources, safety of navigation and prevention of pollution. In view of the importance of international navigation through straits used for such navigation, the régime of passage should be established so as to ensure freedom of navigation through such straits for the ships of all nations and so as to safeguard the rights and legitimate interests of the straits State. In other words, a proper balance should be struck which served both the interests of the international community as a whole and those of the States adjacent to the straits. Such a balance was struck in a very constructive fashion in the joint draft articles submitted by Bulgaria, Czechoslovakia, the German Democratic Republic, Poland, the Ukrainian Soviet Socialist Republic and the Soviet Union (A/CONF.62/C.2/L.11), which was a real reflection of the interests of the world community and of the coastal States. His delegation believed that the proposal provided a solid basis for negotiations on the subject, and supported it fully.

16. Mr. MOORE (United States of America) said that the inadequacies of the traditional doctrine of innocent passage were well known. His delegation appreciated the trend in the debates as well as the various proposals in the Committee, which reflected an understanding of the importance of navigation and overflight through straits for the global flow of trade and communications and for a stable and peaceful world order and showed that there need be no conflict between the interests of States transiting and States bordering straits. The proposals reflected the three categories of concern most frequently expressed by States bordering straits: the security of the coastal State, safety of navigation and prevention of pollution. With respect to the security of States bordering straits, his delegation agreed that the chapter on passage through straits used for international navigation in the new convention might specify that the right of unimpeded transit was to be exercised solely for the purpose of continuous and expeditious transit of the strait. The convention should require that ships and aircraft in transit refrain from any threat or use of force, in violation of the Charter of the United Nations, against the territorial integrity or political independence of a State bordering the strait. With respect to safety of navigation, it was possible to achieve a balance which would fully protect the interests of States whose ships and aircraft transited a strait and the interests of States bordering the strait. The first step was necessarily to ensure that transiting vessels and aircraft complied with applicable international safety regulations. The draft articles pre-

sented by the United Kingdom (A/CONF.62/C.2/L.3), which his delegation supported, met that need.

17. With respect to aircraft, his delegation felt that civil aircraft in transit should comply with the high seas standards, recommended practices and procedures established by the International Civil Aviation Organization (ICAO) under the Convention on International Civil Aviation¹ signed at Chicago in 1944; State-owned aircraft should ordinarily respect those rules and always operate with due regard for the safety of navigation. On the other hand, it was necessary to encourage States bordering crowded straits to propose traffic separation schemes where necessary for safe passage of ships. Such schemes should be submitted to the competent international organization for approval.

18. The third category of concern related to the prevention of pollution and in that connexion he stressed the importance of the United Kingdom proposal to require that ships in transit should comply with international regulations, procedures and practices for the prevention and control of pollution from ships. Subject to appropriate safeguards and the sovereign immunity exception, States bordering straits should be able to enforce measures against violations within the strait for deviation from approved traffic separation schemes.

19. With respect to both safety and pollution in straits, he stressed the importance of making adequate provision for compensation in case of damage; the provisions concerning liability envisaged in the United Kingdom draft articles and in the proposals submitted by a number of Eastern European States (A/CONF.62/C.2/L.11) were interesting in that connexion. Similarly, it should be remembered that some straits required special standards in addition to those universally adopted; for that reason, his delegation would welcome it if States bordering a strait recommended to the appropriate international organization for approval any special safety or pollution standards which they felt were necessary; in that way, States bordering the strait would have a predominant role in the formulation of such special standards, but at the same time, the interests of the international community would be fully protected.

20. His delegation noted with satisfaction that most of the recently introduced proposals concerning transit through straits included the essential element of transit by aircraft; while there had been suggestions that the Conference should not consider questions related to overflight of aircraft, it should be recalled that such questions were inseparably linked with the law of the sea in the 1958 Geneva Conventions; moreover, since the breadth of the territorial sea would be decided by the Conference, the question of overflight could not be avoided unless some States were willing to forgo their sovereignty over the air space above their territorial sea. At the present time, all aircraft, both private and State-owned, had the right to overfly high seas areas, including high seas within straits used for international navigation. Unless adequate provision was made concerning overflight of straits, extension of the territorial sea to 12 miles would alter that basic right of overflight through a number of straits used for international navigation which would be overlapped by a 12-mile territorial sea. The Chicago Convention was insufficient for the protection of that right, for three reasons: first, not all States had become parties to that Convention; secondly, with respect to overflight of territorial waters by private aircraft, the Convention authorized States in certain circumstances to restrict or suspend overflight, and thirdly, the provisions of the Convention did not apply to overflight by State-owned aircraft.

21. Finally, his delegation wished to state that unimpeded transit of straits used for international navigation and the interests of States bordering straits in matters of security, safety of navigation and the prevention of pollution were com-

¹ United Nations, *Treaty Series*, vol. 15, p. 296.

plementary matters, and the Conference should prepare articles which would fully protect the interests of all States.

22. Mr. MYRSTEN (Sweden) said he wished to make his delegation's position perfectly clear. The rules of innocent passage were aimed at creating a balance between the interests of coastal States and those of international navigation. The existing rules on that subject were the result of the compromise reached at the First Conference on the Law of the Sea, in the 1958 Convention on the Territorial Sea and the Contiguous Zone.² As with most compromises, those rules contained weak points. However, his delegation felt that that did not warrant the adoption of totally new criteria in order to arrive at the aforementioned balance. For that reason, his delegation felt that any revision should be made within the framework of the existing rules.

23. If, however, a majority of the States participating in the Conference favoured a régime other than that of innocent passage for passage through international straits, his delegation felt that such a régime should be applied only to those straits which currently constituted part of the high seas and that in any case narrow straits, that was to say those of less than 6 nautical miles in width, i.e., twice the minimum breadth of the territorial sea, should be exempted from any such régime. His delegation's position was based on the fact that it was not fair to ask coastal States to give up the control over passage through narrow straits that they had exercised for hundreds of years in accordance with the rules of international law.

24. In conclusion, he stated that, should the Conference decide to adopt a new régime for passage in international straits, his delegation would support the proposal submitted by the delegation of Denmark (A/CONF.62/C.2/L.15) as an amendment to the United Kingdom proposal (A/CONF.62/C.2/L.3).

25. Mr. WARIOBA (United Republic of Tanzania) said that, in dealing with passage through straits used for international navigation, it was necessary to distinguish between ships performing national duties and ships performing international duties. Merchant ships performed an international duty and their passage through straits should not be hampered in any way; in that respect his delegation was ready to negotiate on a régime that would ensure them easy and safe passage; that régime should be prepared at all levels, international, regional, subregional and national, and should determine the rights and duties of all parties in respect of the passage of ships through straits; regions and States would be expected to ensure the implementation of the general norms.

26. In that connexion, the flag State, for example, would be responsible for the technical requirements of ships, such as construction standards, and the coastal State would be responsible for rules that would ensure speedy and safe passage. To that end, the coastal State would need information in order to know the amount of traffic at any time and to supervise passage accordingly. He did not therefore see any reason for objections to advance notification of a ship's passage through a particular strait and he questioned the basis for maintaining that that kind of power for the coastal State would be detrimental to international navigation.

27. With regard to warships, they were not, in his delegation's opinion, in the service of the international community: rather, they were used to further the foreign policy objectives of a few States. Warships should therefore give notification of passage and should not pass through a strait secretly because of the risks to the coastal State. In any case, why the secrecy for warships if their passage was peaceful?

28. The point he wished to make was that merchant navigation was the only truly international type of navigation and should be safeguarded at all times; but warships should observe norms that would ensure peaceful passage when they used international straits.

29. His delegation did not support proposals such as those submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction by the United States in 1971³ and the Soviet Union in 1972⁴ or the United Kingdom proposal in document A/CONF.62/C.2/L.3, which seemed aimed at regulating the behaviour of ships instead of the behaviour of States, which was the real purpose of the Conference.

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

30. Mr. PISK (Czechoslovakia), speaking as one of the sponsors of the draft articles in document A/CONF.62/C.2/L.11, pointed out in the first place that in the new convention on the law of the sea, the passage of ships through straits used for international navigation should be dealt with as a specific problem, separate from the problems of passage of ships through the territorial sea, because of the importance of such straits for world trade and communication and their present position in international law. In the case of the territorial sea, where long distances were sometimes involved, the interests of the coastal State, particularly in respect of security, were of decisive importance. The situation was different in the case of passage through straits, which as a rule were only a few miles long, where the interests of the international community as a whole in maintaining smooth international navigation, transport of goods and friendly relations among States should prevail. The situation of straits governed by special international treaties should not be affected by the general régime to be adopted.

31. In the second place, there was a large number of straits situated outside major international sea-ways and used, as a rule, only by the coastal States. For all ships in those straits, the régime of innocent passage was appropriate. That applied also to straits used for international navigation, linking the high sea and the territorial sea of one or more States.

32. The main problem was to establish a viable legal régime for the passage of ships through straits used for international navigation and linking two parts of the high seas. There were relatively few such straits, but an overwhelming majority of sea routes and the bulk of the maritime goods transport passed through them. The régime for those straits should be based on the principles of equality of States, mutual co-operation and the development of friendly relations. Any restrictive measures, which could cause delays in the passage of ships and discrimination of any kind, should be rejected. Restrictions would increase transport costs and thus affect not only the users of the straits, but many other countries as well.

33. His delegation did not find arguments based on the security of the straits States convincing as justification for restrictions. The principle of free passage had not affected the security of such States; nor would any restriction of that principle guarantee it. The best guarantee was the fact that any act of aggression committed in the straits against the coastal States would be contrary to the interests of States using the straits.

34. Freedom of navigation was not incompatible with the needs arising from the special situation of archipelagic States, whose legitimate interests should be recognized and reconciled with those of the international community.

35. The draft articles in document A/CONF.62/C.2/L.11 were based on the principle that all ships in transit in straits used for international navigation between two parts of the high seas should enjoy equal freedom of navigation. That freedom should be exercised only for the purpose of transit passage through the straits and in conformity with certain rules set forth in the draft. Those rules prohibited any threat to the security of the coastal States bordering on the straits or to their

³ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21, annex IV.*

⁴ *Ibid.*, Twenty-seventh Session, Supplement No. 21 and corrigendum, annex III, sect. 5.

² *Ibid.*, vol. 516, p. 206.

territorial integrity or political independence. Ships in transit should take all necessary precautions to avoid causing pollution or other damage to those States, and the latter should be compensated for any damage which might be caused. The draft explicitly confirmed that the sovereign rights of the coastal States with respect to the surface, the sea-bed and the living and mineral resources of the straits should not be affected. Ships in transit through the straits should comply strictly with the international rules concerning the prevention of collisions or other accidents and observe the established order of traffic and dividing lines in all straits where there was heavy traffic. On the other hand, the coastal States should assume the obligation not to interrupt, suspend or impede the transit of ships through the straits.

36. To sum up, the draft reconciled the rights and duties of the coastal States with those of the States using the straits. A similar balance could be worked out from the draft concerning freedom of overflight of such straits by aircraft.

37. As a land-locked country, Czechoslovakia considered that freedom of navigation for the purpose of transit passage through straits used for international navigation was essential to guarantee its free access to the oceans and the ocean floor.

38. Mr. VARVESI (Italy) said that his delegation's position was set forth in the proposal submitted to the sea-bed Committee, which appeared on page 76 of volume VI, of that Committee's report (A/9021 and Corr.1 and 3). Nevertheless, the document submitted by the United Kingdom delegation (A/CONF.62/C.2/L.3) was extremely interesting; it seemed to contain useful material and to facilitate an understanding on the question of straits. His delegation would give favourable consideration to possibilities for reaching a satisfactory solution in the consultations to take place on the subject, taking into account other proposals submitted, and might support such a solution if it met the concerns underlying his proposal.

The meeting rose at 6.15 p.m.

13th meeting

Tuesday, 23 July 1974, at 10.50 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Straits used for international navigation (*continued*)

[*Agenda item 4*]

1. Mr. BEESLEY (Canada) said that he hoped that the preliminary remarks he was about to make on the proposals submitted so far would indicate his delegation's willingness to enter into serious negotiations. He shared the view that the subject under discussion was one of the fundamental issues of the Conference, which would influence the solution of many interrelated problems. His delegation therefore attached great importance to the need to accommodate the interests not only of the coastal and straits States in question but also of the international community as a whole. The matters involved were the maintenance of freedom of navigation, the preservation of the marine environment and the development of regulations which would enable those aims to be achieved peacefully, rather than become an encouragement for disputes.

2. All the proposals submitted so far assumed a plurality of régimes—that of the territorial sea, that of straits customarily used for international passage, the possibility of alternative routes and the problem of straits less than 24 miles wide. While care must be taken not to create systems of discrimination, the establishment of world-wide regulations did not preclude the establishment of special régimes for particular straits.

3. While the definition of a "strait used for international navigation" must take into account its geographical aspects, many straits which appeared suitable for international navigation on charts were not so used for very good reasons. In the judgment rendered by the International Court of Justice in the Corfu Channel case,¹ the Court had adopted as a criterion of the strait's actual use for international navigation the number of ships using it and the number of flags represented. The major point was that in defining an international strait one must consider, along with the geographical element, the usage element, namely, that it must be a strait that had traditionally been used for international navigation.

4. The statement by the United States representative at the preceding meeting had drawn attention to problems of safety

and pollution; he had said that some straits, because of depth or other navigational or environmental limitations, would require special standards in addition to those universally adopted. The Canadian delegation was in basic agreement with that differentiation between certain straits and their régimes.

5. While his delegation considered that the proposals submitted so far, and in particular those of six socialist States of Eastern Europe (A/CONF.62/C.2/L.11) and the United Kingdom (A/CONF.62/C.2/L.3), were moving in the right direction, it had reservations about all of them and considered that none properly accommodated the interests of all States. Both the proposals mentioned included the idea that the management of ocean space recommended in the report of the United Nations Conference on the Human Environment, held at Stockholm from 5 to 16 June 1972,² was even more necessary for narrow straits.

6. The growing recognition that the concept of the jurisdiction of the flag State implied also its responsibility in case of disaster caused by the passage of a ship was an encouraging development.

7. However, he requested clarification of various points in the United Kingdom proposal. For instance, in chapter II, article 15 seemed to imply that passage must always be presumed to be innocent unless the coastal State claimed otherwise. Article 16 did not seem to take sufficient account of the fact that the coastal State's security could be threatened as much by environmental as by military problems. Paragraph 3 of that article tended to strengthen the presumption of innocence because it left the judgement as to the prejudicial nature of passage to the discretion of the ship's captain. Care should, however, be taken regarding the extent of that discretion, especially if it implied a right to override the coastal State's laws and regulations. It might be necessary to give a list of the matters over which the coastal State might make laws and regulations as proposed in article 18 in order to ensure that new regulations were not suddenly introduced to the detriment of the interests of flag States.

¹ *Corfu Channel case, Judgment of April 9th, 1949: I.C.J. Reports 1949, p. 4.*

² United Nations publication, Sales No. E.73.II.A.14.

8. The question of the shipowner's liability for damage caused by the passage of ships and compensation for that damage had been raised in both proposals (A/CONF.62/C.2/L.3 and 11) but his delegation had reservations on those proposals because it did not consider them sufficiently comprehensive.
9. In view of the crucial importance of the issues involved to coastal States, to countries with large maritime fleets and to those which, although not possessing such fleets, were vitally concerned with passage through straits, the Conference might not be able to reach an immediate solution to the problem. The articles to be drafted should set forth preventive as well as remedial measures against pollution of the marine environment, and their general provisions should take into account special situations, customary uses of straits, the needs and interests of coastal States bordering on straits used for international navigation, and those of the international community as a whole. If they contained a clear statement of the rights and duties of flag and coastal States, those interests need not conflict. The straits question might be one of those questions that could not be resolved except by a direct link between the régime laid down by the Conference and means of ensuring settlement of disputes that arose out of the new régime.
10. Mr. ABDEL HAMID (Egypt) welcomed the fact that the discussion so far was proceeding on a serious level, as evidenced by the statement of the representative of the United States at the preceding meeting confirming the need to ensure the security of the coastal State, safety of navigation and the prevention of pollution—three aspects of the question which were of primary importance to all States. The Egyptian delegation's statement in the general debate at the 23rd plenary meeting had recognized the international importance of passage through straits and the desirability of maintaining such passage in order to promote international prosperity.
11. While he welcomed the attention drawn by the United States representative to the question of the security of the coastal State, he wished to ask him two questions. The first was why his country did not respect the requirement that prior authorization should be given by the coastal State for passage of warships or at least that the coastal State should be notified of such passage, and the second was how the coastal State could verify whether a submarine refrained from testing weapons of any kind during its passage through straits if it remained submerged.
12. With regard to the proposal submitted by the United Kingdom (A/CONF.62/C.2/L.3), chapter II, article 1, paragraph 3, recognized the sovereignty of the coastal State and article 18 confirmed that sovereignty with regard to a long list of objectives. Those provisions might be valid if they applied to some high seas area in which the coastal State could exercise a certain jurisdiction, but if they referred to the area under national sovereignty, the complexity of the marine environment might require the coastal State to co-operate with the international community in order to facilitate navigation.
13. Again, although there was general agreement that such passage must be peaceful, the various proposals did not indicate how the coastal State could exercise any supervisory powers granted to it.
14. The United Kingdom representative had referred at the preceding meeting to his country's global commitments. Surely the matter under discussion was not military commitments but the peaceful use of the seas, and extra-legal issues could not be injected into the legal provisions for the régime.
15. Mr. SYMONIDES (Poland) said that his country attached particular importance to the maintenance of the right of unimpeded passage through straits because it bordered on the Baltic Sea, from which the way to other seas and oceans led through the Baltic Straits. The traditional routes of its merchant fleet also passed through other straits.
16. The question of what straits should be subject to the principle of free transit had been answered by the sponsors of document A/CONF.62/C.2/L.11, in article 1, paragraph 1, which obviously applied to straits of a width not exceeding 24 miles. Straits more than 24 miles wide created no problems, since the waters beyond the 12-mile limit constituted part of the open sea and allowed for unrestricted free passage. It was, however, unjustified in terms of international law to classify straits into those up to 6 miles wide and those from 6 to 24 miles wide, especially since an overwhelming majority of delegations recognized a 12-mile territorial sea. In both cases, the legal status was identical and the waters of such straits were territorial waters.
17. That did not, however, mean that transit through straits up to 24 miles wide could be based on the principle of innocent passage through the territorial sea. Passage through straits must be subject to separate rules, because both the law of the sea currently in force and the draft proposals submitted to the Conference underlined the fact that passage through straits used for international navigation could not be suspended. It was possible to bypass a territorial sea by extending navigation routes but it was impossible to avoid passage through certain straits. If the decision to grant or refuse passage could be taken arbitrarily on the basis of the still not well defined notion of "innocent passage", it might lead to discrimination against some States and to the limitation of the right of navigation for subjective reasons due to existing alliances, political ties and particular interests of coastal States. That was especially applicable to the passage of warships.
18. It was therefore necessary to resolve separately the question of the right of passage through and above straits. The rules governing transit through straits were enumerated in article 1, paragraph 2, of document A/CONF.62/C.2/L.11. In the case of narrow straits, the coastal State would also have the right to trace out special corridors for transit purposes.
19. With regard to the obligations imposed not only on ships in transit but also on the coastal State, one question required clarification. The right of transit would only be theoretical and transit would not be unimpeded if the coastal State was allowed to build structures and installations which could in fact lead to the closing of a narrow strait.
20. While no one wished to deprive coastal States of their sovereign right to fish, explore the area or exploit natural resources, as explicitly stated in article 1, paragraph 3 (b), of the draft proposal, coastal States should take into account the interests of international navigation when undertaking such activities.
21. Rules concerning the exercise of unimpeded transit through straits obviously did not mean the abrogation of existing international agreements in that respect. The task of the Conference was to draft rules to encourage the present and future development of international relations in accordance with the requirements of international co-operation and security which were met by the principle of free transit.
22. Mr. ARIAS SCHREIBER (Peru) said that the views of his delegation were very largely the same as those expressed by the representative of the United Republic of Tanzania at the previous meeting; a distinction had to be made between the interests of humanity in general and those of certain States.
23. The passage of merchant vessels through straits used for international navigation was a peaceful use of the seas, was considered innocent and was of benefit to all countries. It should be preserved without discrimination; straits States must facilitate the rapid and safe passage of such vessels. Merchant vessels must comply with the regulations laid down by the coastal States so as to avoid damage to the marine environment and danger to shipping. The passage of warships was not in the general interest, nor was it a peaceful and innocent use of the seas. It served the strategic and military interests of a small

number of maritime Powers. While it might, in certain cases, serve other States, it should be looked upon as a necessary evil so long as there were still possibilities of conflict between nations. It was only reasonable that warships should respect the rights and legitimate interests of coastal States. The only suitable way to reach a satisfactory agreement between States using straits and States bordering on straits was to revise and define the concept of innocent passage through the territorial sea, specifying what vessels in transit could or could not do.

24. The proposal submitted by the United Kingdom (A/CONF.62/C.2/L.3) and that submitted by a group of socialist countries (A/CONF.62/C.2/L.11) were based on a principle that was not in keeping with the nature of marine space or with the development of the law of the sea. Instead of referring to the passage of vessels through the territorial sea and straits used for international navigation, the proposals spoke of straits linking one part of the high seas with another part of the high seas, whereas the likelihood was that in future they would link not two parts of the high seas, but the economic zones of one or more coastal States. The definition must therefore be amended. The essential point was that the area involved was territorial sea; consequently, the provisions governing its use could not disregard the rights and jurisdiction which the coastal State exercised within that area.

25. As part of the rights and jurisdiction, it was logical that the coastal States should require notification of the passage of vessels with special status; it was even more logical to require authorization for the passage of warships. If, as the great Powers maintained, the passage was innocent, warships must prove their innocence in compliance with the convention. The same was true for the passage of submarines, whose concealment could only be for far from innocent reasons. Like other delegations, he hoped that further explanations would be forthcoming on the subject of submarines.

26. He did not see why the coastal State should be denied the possibility of taking precautions if it felt that there was a serious threat to its legitimate interests from the passage of any kind of vessel through straits within its territorial sea. Article 37 of the draft articles submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction by Malta (A/9021 and Corr. 1 and 3, vol. III, sect. 17) covered that point; the draft articles submitted by the United Kingdom and those submitted by the socialist countries excluded it. Indeed, the latter would even prohibit the stopping of vessels in transit or the communication of information.

27. It was clear that certain maritime Powers intended to use the law of the sea as an instrument of their policy of freedom of action and to serve their plans for hegemony, and they expected other States to serve as accomplices in achieving those aims. They even went so far as to make recognition of large areas of national jurisdiction for mainly economic purposes conditional on the simultaneous acceptance of free passage through straits for mainly aggressive purposes, in the vain hope that non-straits States would accept such a deal. His country would not be a party to that manoeuvre. He was certain that there would be a similar response from those States that opposed the claims of a minority of maritime Powers and wished to establish a new legal order governing the use of the seas based on the principles of peace and justice for all nations of the world. It appeared from an initial examination that the proposals submitted by the delegation of Oman (A/CONF.62/C.2/L.16) were a step in the right direction.

28. Mr. EL KOHEN (Morocco) said that he wished to clear up a misunderstanding that had arisen over his delegation's position on the question of straits. His delegation was in favour of the application of the principle of innocent passage, which was the traditional basis for navigation in the territorial sea. The application of that principle had allowed the development of international trade and of co-operation between nations and

had never harmed international navigation in any way. Indeed, it had become a practice of international society and had proved entirely satisfactory. There was therefore no need to change the rule of innocent passage for something that might prove less certain, at a time when traffic had become heavier and the risk of accidents of all kinds greater than ever before. He reminded the Committee that Morocco was one of the sponsors of the draft articles on navigation through the territorial sea, including straits used for international navigation, submitted to the sea-bed Committee (A/9021 and corr. 1 and 3, vol. III, sect. 6), in which there was a very accurate balance between the elements of the concept of innocent passage. That document could serve as a useful basis for the work of the Committee.

29. A Moroccan law of 2 March 1973 provided that navigation through and overflight of straits were permitted on the conditions set out in the international agreements to which Morocco was a party and in accordance with the principle of innocent passage as defined in international law. As a member of the Organization of African Unity (OAU), Morocco supported that Organization's Declaration on the issues of the law of the sea (A/CONF.62/33), which endorsed the régime of innocent passage in straits used for international navigation.

30. Mr. HARASZTI (Hungary) said that, as a land-locked country engaged in considerable international trade, Hungary had a particular interest in free access to the seas and attached great importance to freedom of passage for all States without discrimination through straits used for international navigation, whether or not the straits lay within the territorial sea of a coastal State or contained areas of high seas. That well-established rule of international law should be embodied in the new convention on the law of the sea.

31. The doctrine of innocent passage was not sufficient for passage between parts of the high seas, despite the provisions of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.³ The doctrine could still be used by a coastal State as a pretext to impede free transit. His delegation therefore supported the draft articles in document A/CONF.62/C.2/L.11, which set out clearly the concept of freedom of navigation. The doctrine of innocent passage should apply only to straits providing access from the high sea to territorial sea in which the principle of innocent passage also applied. That point of view was adequately reflected in article 2 of the six-Power draft.

32. The right of free passage did not affect the right of coastal States to regulate the passage of ships through straits within their territorial waters in the interests of safety of navigation. Regulation should not, of course, interfere with freedom of navigation.

33. The right of freedom of overflight should also be recognized in the new convention. He could not agree with those delegations that maintained that overflight should be regulated by air law conventions. The sovereignty of a coastal State extended to the air space over its territorial waters; the convention must recognize that and the right to overflight.

34. The draft articles contained in document A/CONF.62/C.2/L.11 could serve as a useful basis for the elaboration of articles establishing the legal régime of straits used for international navigation.

35. Mr. TUNCEL (Turkey), in his preliminary comments on the draft articles under discussion (A/CONF.62/C.2/L.3 and 11) said that the United Kingdom and the Soviet Union had taken a very similar attitude to pollution from ships in international straits. They seemed to feel that the coastal State should have no jurisdiction in the matter and that vessels should comply with international regulations. There was a complementary view that the coastal State should bear responsibility, but should act in the light of international recommen-

³United Nations, *Treaty Series*, vol. 516, p. 206.

dations so as to ensure a uniform régime applicable to straits. His delegation reserved its position on the matter.

36. The issue of traffic separation had been the subject of considerable discussion in the sea-bed Committee. His delegation had not taken a position on the issue. It would be advisable to consider carefully whether the recommendations of the competent international organization should be given the status of compulsory treaty law.

37. Articles 19 and 20 of the 1958 Geneva Convention were incorporated in chapter II of the draft articles submitted by the United Kingdom. They seemed to be applicable to criminal and civil responsibility in respect of merchant vessels and navigation incidents in straits. The responsibility of non-commercial vessels was set out in chapter III, article 7, of the United Kingdom draft articles. The definition employed in that article was not the same as that used in chapter II, article 25; he hoped the representative of the United Kingdom would be able to clarify that point. The Soviet proposal did not mention non-commercial vessels, and did not state whether the liability mentioned in article 1, paragraph 2 (*d*), was criminal or civil. It was not clear whether the definition of the term "warship" given in chapter II, article 26, of the United Kingdom draft articles was applicable to passage through straits. His delegation reserved its position on the matter and would consider the implications of a definition in the context of the rules governing passage through the territorial sea and through straits.

38. His delegation welcomed the fact that most of the proposals made recognized the validity of treaty law. The convention being drafted should recognize the legal régime applied in all the previous relevant conventions. Chapter III, article 10, of the United Kingdom draft articles covered multilateral conventions, including the United Nations Charter, while the draft articles submitted by the Soviet Union did not mention the United Nations Charter. The United Kingdom's article 10 should be split into two subparagraphs, one dealing with the legal régime based on treaty law and one providing a more detailed description of the régime based on the United Nations Charter. As far as treaty law was concerned, his delegation preferred the wording used in article 1, paragraph 3 (*c*), of the USSR draft articles, which used the term "legal régime" rather than the term "obligations".

39. Pilotage and assistance in the event of collision or other incidents were two issues that should be covered by the convention. Provisions should be made for boats to be piloted by pilots from the coastal State, especially where passage was through narrow straits or straits subject to heavy traffic. The coastal State should have the right to come to the aid of vessels involved in accidents, because channels must be cleared for passage as quickly as possible.

40. He had noted with considerable interest the suggestion by the delegations of Denmark and Finland at the 11th meeting that a distinction should be made between traditional straits and those created by the extension of the territorial sea.

41. Mr. ANDERSEN (Iceland) said that the questions of a territorial sea of 12 miles, an economic zone of up to 200 miles and unimpeded passage through straits used for international navigation were closely linked and must be resolved together. Since consensus had been reached on the first two points, the straits issue was of crucial importance. Mutual distrust and suspicion should be set aside so as to safeguard freedom of navigation through straits and in the economic zone.

42. The right of unimpeded passage and adequate protection of the interests of the coastal State must be balanced. In that connexion he supported the United Kingdom proposals (A/CONF.62/C.2/L.3), which had been supplemented by the proposals of Denmark and Finland (A/CONF.62/C.2/L.15) and similar proposals such as those put forward by six socialist countries (A/CONF.62/C.2/L.11).

43. An agreement along those lines would greatly facilitate the work of the Conference on the economic zone. He hoped that the straits issue would not become a stumbling block but rather a catalyzing factor in ensuring the successful treatment of the economic zone.

44. Mr. LING Ching (China), commenting on the proposals of Oman (A/CONF.62/C.2/L.16) and the Soviet Union (A/CONF.62/C.2/L.11), said that the legal status of the territorial sea differed from that of the high seas. The territorial sea was undeniably an inseparable part of the territory of the coastal State, which exercised full sovereignty over it. A strait lying within the limits of the territorial sea could hardly change its status and become part of the high seas simply because it was normally used for international navigation. It stood to reason that the strait State exercised sovereignty and jurisdiction over such a strait, and had the right to make all the necessary laws and regulations governing it. The very title of the draft articles submitted by Oman, "Navigation through the territorial sea, including straits used for international navigation", showed that such straits remained part of the territorial sea of the coastal State and retained their legal status as such. Moreover, the Oman proposal explicitly provided for a number of specific rights of the coastal State in its regulation of such a strait. The Soviet proposal, however, while placing restrictions on the sovereignty and rights of the coastal State, demanded the right of equal freedom of navigation for all ships, including warships. That, in essence, was a denial of the status of such straits as territorial sea and of the coastal State's sovereignty and jurisdiction over them. Such contempt for the sovereignty of the strait State was unacceptable to his delegation.

45. With respect to the régime of innocent passage, his delegation believed that while the sovereignty of the strait State must be fully respected, the needs of international navigation must be taken into account and all necessary measures adopted to ensure unimpeded international trade. That was a very important point, on which many countries had understandably expressed concern. In principle innocent passage meant passage granted to foreign vessels provided that they did not prejudice the peace, good order and security of the coastal State and that they observed the relevant laws and regulations of that State. The draft articles submitted by Oman not only safeguarded the sovereign security and interests of the coastal State but also took into account the convenience of international navigation. They set forth a number of reasonable objective criteria permitting unimpeded passage for foreign merchant vessels, and providing ample guarantees to such vessels engaging in normal international transport. His delegation believed that those proposals could be taken as the basis for the Committee's discussion.

46. The passage of foreign military vessels was, however, an entirely different matter, and must be clearly distinguished from that of foreign merchant vessels, as had rightly been pointed out by the representatives of Sri Lanka and the United Republic of Tanzania at the 11th and 12th meetings respectively. The super-Powers had always tried to obliterate that distinction under the smoke-screen of "all ships", and had adopted pretexts of all kinds in an attempt to impose free passage through straits by warships.

47. One super-Power had asserted that its insistence on freedom of navigation through straits was aimed at developing international trade. It was the legitimate desire of the peoples of the world to develop such trade; but that had nothing to do with warships and nuclear submarines. Moreover, the free passage of such vessels through straits in itself posed a threat to the strait State or to others. The Soviet representative at the preceding meeting had referred to the increase in the volume of international trade. That increase could hardly have been brought about by the free passage of warships and nuclear submarines through straits.

48. That super-Power was also peddling its claim for free passage of warships through straits under the label of safeguarding collective security. But it had substantially increased its fleet in the Mediterranean and in the Indian Ocean, thus directly threatening the security of the countries in those regions, infringing their sovereignty and interfering in their internal affairs. That action could in no way be described as a measure of collective security; on the contrary it had greatly aggravated insecurity in the world.

49. That super-Power was also flaunting the ideas of peace and disarmament to cover up the expansion of its naval force. Facts showed that the very Power that had been talking glibly about disarmament had in reality greatly expanded its naval force and strengthened its strategic position in the world. One of its admirals had in fact confessed that his country's navy had become a diplomatic means of intimidation and containment.

50. Thus, the ideas of "all ships" and "free passage" as advocated by the super-Powers were designed to enable their warships and nuclear submarines to cross the oceans of the world in implementation of their expansionist policies and their strategy of world hegemony. If that design were carried out, not only would the sovereignty of the straits States be infringed, but the peace and security of the world as a whole would be threatened. His country could not accept that approach. The draft articles submitted by Oman provided that the coastal State might require prior notification to or authorization by its competent authorities for the passage of foreign warships through its territorial sea, in conformity with regulations in force in such a State. His delegation considered that requirement to be the undeniable right of a sovereign State and firmly supported its inclusion in the convention.

51. The super-Powers had advocated free passage through straits for all ships, including warships, as a precondition for a package settlement of various issues relating to the law of the sea. His delegation believed that, since there were certain interrelationships between the various aspects of that law, due consideration should be given, in the course of dealing with a certain item, to other related items. However, that should never be done at the expense of the sovereignty of the States concerned and the interest of international peace and security. Any attempt to exchange recognition of the legitimate demands of the developing countries for free passage through straits by military vessels would not be tolerated.

✓ 52. Mr. TARCICI (Yemen) said that it was the duty of the coastal State to facilitate as far as possible the passage of civil and merchant vessels and aircraft of all States. The action required for that purpose made the exercise of sovereignty by the coastal State over its territorial waters obligatory. It was the duty of a coastal State not only to facilitate international trade, but also to protect itself against any attack on or threat to its national security and sovereignty. It was therefore essential for warships and military aircraft to obtain authorization to pass through territorial waters. Every State guarded its sovereignty jealously, particularly when it was small and inadequately armed; no State could tolerate the unnotified presence of warships, submarines or military aircraft in the area under its jurisdiction. Nevertheless, once a coastal State had assured itself that military vessels or aircraft did not present any danger to national security, permission for their passage should be granted rapidly.

53. It was not likely that any instrument or treaty drawn up under the influence of certain Powers and without due regard to the points he had made would be signed by Governments of countries that felt threatened, and it would certainly not be ratified by Parliaments that felt responsible for the security of their country and their rising and future generations.

54. Mr. VANDERPUEYE (Ghana) said that the question of establishing a generally accepted régime for straits used for international navigation had long concerned the international

community, as evidenced by the development of the régimes of straits such as those of Gibraltar and Magellan, the Danish Strait, the Bosphorus and the Dardanelles, most of which had been evolved long before many of the countries represented at the Conference had attained nationhood. The question had been dealt with in international treaties and conventions and had engaged the consideration of the International Court of Justice. The fact that the Conference was still examining the issue showed that past solutions had been unsatisfactory. The Declaration on the issues of the law of the sea of the Organization of African Unity (A/CONF.62/33) had recognized the complexity of the problems of straits used for international navigation by stating that, in view of the importance of such navigation, the African States endorsed the régime of innocent passage in principle but recognized the need for further specific provisions governing that régime.

55. His delegation believed that an equitable solution to the problem must attempt to strike a balance between the international maritime community's interest in traversing such straits and the interest of the coastal State in its own territorial sea, and in particular in the security, safety of navigation and prevention of pollution in that sea. It was against that yardstick that his delegation would weigh any proposals before the Conference.

56. His delegation believed that the definition of a strait should be comprehensive enough to include not only geographical or geomorphological characteristics such as width and depth but also the functional aspects of the strait such as international maritime traffic and local economic interests.

57. With regard to the nature of the ships passing through straits, his delegation believed that if the width of a strait was such that it fell within the territorial sea of the strait State or States, innocent passage only should be allowed unless otherwise provided under treaty. His delegation appreciated the argument put forward by the advocates of the concept of freedom of navigation—which was, incidentally, quite new in its application to straits—that the application of that concept was necessitated by the proposed recognition of a 12-mile breadth for the territorial sea, which would mean that a large number of straits would fall within the territorial sea of a State or States. His delegation would support the application of the concept of freedom of navigation in respect of straits lying outside the territorial sea, but not its application to areas falling within the territorial sea. It believed that there should be different régimes for different categories of straits.

58. In his delegation's view, merchant vessels should enjoy greater facility of passage than warships, on the understanding that the new convention should deal with the passage of warships only in time of peace. The question of overflight should be regulated within the framework of the Chicago Convention on International Civil Aviation⁴ or another agreement, but not at the present Conference.

59. His delegation felt strongly that the legitimate interests of coastal States in regulating transit through straits must be recognized and protected, and that any arrangements must protect the peace and security of the coastal States. It therefore proposed a number of formulations for the consideration of the Committee.

60. First, where a strait used for international navigation between one part of the high seas and another part of the high seas exceeded 24 miles in width, all ships in transit should enjoy the same freedom of navigation as they enjoyed on the high seas for the purpose of transit over the belt of the waters of the strait which lay outside the territorial sea or the internal waters of the coastal State.

61. Secondly, freedom of navigation should, however, be exercised with due regard to the interests of a coastal State in

⁴ *Ibid.*, vol. 15, p. 296.

respect of their national security, sanitation and pollution control, as also conservation and regulation of fisheries.

62. Thirdly, passage through straits which fell within the territorial sea of one or more States for ships of all nations should be governed by the principle of innocent passage as applicable to passage through the territorial sea of the State. The right of overflight for an aircraft across the strait should be governed by the same principle as the passage of ships.

63. Fourthly, warships should be required to give advance notification to the coastal State of their intention to pass through a strait which lay within the territorial waters of two or more States. Such warships should not in the area of the strait engage in any exercise or gunfire, use weapons of any kind, launch aircraft, undertake hydrographical work or engage in other acts of a nature unrelated to the transit.

64. Mr. STEVENSON (United States of America) in exercise of his right of reply, explained to the Egyptian representative, who had asked what assurance there would be that a submerged submarine in transit through a strait would respect the obligation not to threaten the security of that State, that the United States fully expected to comply with any treaty which it signed and ratified. Clearly, there was always a risk of States not complying with their legal duties, whether they related to a surface or submarine vessel; but his country's record in that respect had been a very good one. Indeed, the fact that it was seeking a right of submerged transit indicated its intention to abide by its obligations.

65. A strait was an area of confined waters in which no captain of a surface ship, much less of a submarine, would choose to take action threatening the security of a strait State. Moreover, since submarines were equipped to travel submerged, that was the safest way for them to pass through an international strait.

66. In reply to the question why the United States had not complied with the obligation of notification or authorization with respect to military vessels passing through the territorial sea, including straits overlapped by that sea, he pointed out that there was no such requirement of notification or authori-

zation under the existing passage régime adopted in 1958 with respect to the territorial sea. In fact, the specific proposals made at the 1958 Conference to require such notification or authorization had not been adopted.

67. His delegation felt that any such requirement for warships would not be desirable, for it would tend to involve strait States much more directly in transits having nothing to do with their own interests, and might conceivably expose them to pressures to which they would not otherwise be subject.

68. The representative of Egypt and others had suggested that there might be something illegitimate about the transit of warships or military aircraft through or over straits without notice or authorization. However, it was unrealistic to entertain proposals which would discriminate against the navigation rights of warships or military aircraft. The exercise of individual and collective defence had been recognized under the United Nations Charter and in repeated actions of the United Nations. All nations, whether they bordered straits or not, recognized the importance of maintaining that right for the protection of their vital territorial and political integrity. The maintenance of transit rights for warships and military aircraft was not only consistent with the Charter but was the only policy consistent with global realities and international stability.

69. Mrs. KELLY DE GUIBOURG (Argentina) and Mr. PRIETO (Chile) pointed out that the Treaty of 1881 defining the boundaries between their countries ensured freedom of navigation through the Straits of Magellan for ships of all flags.

70. Mr. ABDEL HAMID (Egypt), having thanked the representative of the United States for his reply, pointed out that it was precisely because a risk was involved that he had raised the matter. The United States representative had said that the safest way for a submarine to pass was submerged; but the safety of those on shore must also be taken into account, and a balance must be struck. He reserved the right to revert to the matter at a later stage.

The meeting rose at 1.15 p.m.

14th meeting

Tuesday, 23 July 1974, at 3.30 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Straits used for international navigation (*continued*)

[*Agenda item 4*]

1. Mr. SULEIMAN (Oman) introduced the draft articles on navigation through the territorial sea, including straits used for international navigation (A/CONF.62/C.2/L.16), and reiterated certain basic principles.

2. First, navigation through the territorial sea and through straits used for international navigation should be dealt with as an entity, since the straits in question formed part of the territorial sea.

3. Secondly, regulation of navigation through straits should establish a satisfactory balance between the particular interests of the coastal State and the interests of international maritime navigation.

4. Thirdly, the regulation should contribute both to the security of coastal States and to the safety of international maritime navigation. Those objectives could be achieved by the reasonable and adequate exercise by the coastal State of its right to regulate navigation through its territorial sea.

5. Fourthly, the regulation should take due account of the economic realities and scientific and technological developments that had taken place in recent years, and should establish appropriate rules to regulate navigation of certain ships with special characteristics.

6. Fifthly and lastly, the regulation should supply the deficiencies of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone,¹ especially relating to the passage of warships through the territorial sea, including straits.

7. The draft articles contained in document A/CONF.62/C.2/L.16 were divided into two parts: part I dealt with innocent passage through the territorial sea and part II dealt with the right of innocent passage through straits used for international navigation.

8. Article 1, on the right of innocent passage, reproduced article 14, paragraph 1, of the Geneva Convention.

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

9. Article 2 defined passage; paragraph 1 was the same as article 2, paragraph 1, of the draft submitted by Fiji to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (A/9021 and Corr.1 and 3, vol. III, sect. 31) except that it had been considered unnecessary to retain the phrase "internal waters" as it had originally appeared in article 14, paragraph 2, of the Geneva Convention; paragraph 3 had been taken from article 3, paragraph 2, of the eight-Power draft submitted to the sea-bed Committee (*ibid.*, sect. 6).

10. Article 3, paragraph 2, was a modification of chapter II, article 16, paragraph 2, of the United Kingdom draft articles (A/CONF.62/C.2/L.3), with the words "such as" introduced to indicate that the list of activities was not exhaustive.

11. The duties of coastal States were enumerated in article 4, whereas article 5 dealt with the rights of coastal States. Article 6 dealt with the regulation of international navigation in accordance with the rules of international law.

12. Article 8 dealt with the navigation of ships with special characteristics. It should be noted that no prior notification was required under the article for the passage of oil tankers and chemical tankers. Merchant ships were given special treatment under article 10. Article 13 dealt with government ships operated for commercial purposes, whereas article 14 concerned government ships operated for non-commercial purposes. Under article 15, paragraph 3, the coastal State could require prior notification to or authorization by its competent authorities for the passage of foreign warships through its territorial sea.

13. Part II of the draft articles dealt with the right of innocent passage through straits used for international navigation. Article 20 covered the straits as defined by the International Court of Justice in the *Corfu Channel* case² and therefore did not apply to straits which historically had not been used for international navigation. Article 22, which dealt with special duties of coastal States, contained an important innovation in that it established the rule that passage of foreign merchant ships through straits should be presumed to be innocent. That presumption of innocent passage was a new idea, which was justified by the recognition that merchant ships performed an international duty to mankind and an important role in international trade, which was an instrument for development.

14. Mr. CHAO (Singapore) said that the question of international navigation through straits was important to his country first because Singapore depended to a large extent on international trade and the maintenance of the free flow of traffic through the straits was therefore vital to it, and secondly by reason of its geographical situation, since it was locked in on all sides by the territorial waters of its neighbouring States and its only access to the high seas was through the straits.

15. The Committee had before it three sets of draft articles: the draft submitted to the sea-bed Committee by Cyprus, Greece, Indonesia, Malaysia, Morocco, the Philippines, Spain and Yemen (A/9021 and Corr.1 and 2, vol. III, sect. 6), the one submitted by Fiji (*ibid.*, sect. 31) and the more recent United Kingdom draft articles (A/CONF.62/C.2/L.3). His delegation was gratified to note that the object of the relevant articles of all three drafts was to ensure that the régime governing passage through straits should be reasonably objective. There were, however, basic differences of approach among the three sets of articles. The eight-Power proposal was based on the fact that navigation through the territorial sea and through straits used for international navigation should be dealt with as a single entity, since the straits in question formed part of the territorial sea. The proposal of Fiji only applied to straits indirectly when, in article 4, paragraph 2, it provided that there should be no suspension of the innocent passage of foreign ships through straits used for international navigation. The United Kingdom

proposal differentiated between passage through the territorial sea and passage through straits and prescribed different régimes to govern them.

16. Straits formed a vital link between different parts of the globe and the maintenance of that communication was essential for the benefit of the whole international community. Passage through territorial seas was less vital and for that reason separate régimes should be set up for the territorial sea and for straits. In any case, what was important in the last analysis was to adopt rules which would be objective.

17. Mr. LACLETA Y MUÑOZ (Spain) said that the proposals submitted to the Committee reflected two different schools of thought with regard to passage through straits used in international navigation. There were three different points to be considered in connexion with those proposals: how they would affect the nature of ocean space, how they would affect the régime governing navigation in those waters, and, lastly, what attitude they indicated towards the fundamental distinction between merchant ships and warships.

18. One group of States considered that the waters of a strait were no longer, strictly speaking, part of the territorial sea. The draft submitted to the sea-bed Committee by the United States in 1971³ stated in article II, paragraph 1, that "all ships and aircraft in transit shall enjoy the same freedom of navigation and overflight, for the purposes of transit through and over such straits, as they have on the high seas". The words "as they have on the high seas" had been dropped from the text of the socialist countries (A/CONF.62/C.2/L.11) but a careful perusal of article 1, paragraph 2, showed that the freedom it referred to was the same as the freedom of the high seas.

19. On the other hand, the draft submitted by Fiji to the sea-bed Committee in 1973 (A/9021 and Corr.1 and 3, vol. III, sect. 31) and the eight-Power draft (*ibid.*, sect. 6), like the draft recently submitted by Oman (A/CONF.62/C.2/L.16), rightly included the question of straits under the same heading as in General Assembly resolution 2750C (XXV), i.e., that of the régime of territorial sea. Although the straits might be used for international navigation, they formed "part of the territorial sea of one or more States", as stated so well by Oman in article 20 of the draft articles it had submitted.

20. The Spanish delegation had clearly stated its position that the sovereignty of a coastal State extended to straits forming part of its territorial sea, whether or not they were used for international navigation (See A/CONF.62/C.2/L.6).

21. As to the effects of the proposals on the régime governing navigation through straits, the proposals by the United Kingdom (A/CONF.62/C.2/L.3), the socialist States (A/CONF.62/C.2/L.11), and Denmark and Finland (A/CONF.62/C.2/L.15), like those by the United States in 1971,³ and by Italy in 1973 (A/9021 and Corr.1 and 3, vol. III, sect. 19) used the same formula: freedom of navigation for all ships and freedom of overflight for all aircraft. Their real aim was to establish the same freedom for navigation through straits as for navigation on the high seas, a freedom that had already been recognized. Certain countries were trying to get the Conference to reduce the breadth of the territorial sea to 3 miles in certain sea areas, i.e., the straits of other States.

22. The second school of thought was reflected in the 1973 eight-Power draft and the draft just submitted and by Oman, which referred to the régime of navigation through straits as a "right of innocent passage". That régime achieved a balance between the interests of the coastal State and the legitimate interests of international navigation. The Oman draft clearly defined innocent passage and the powers of the coastal State with regard to it. That was a well-balanced proposal which harmonized the rights and duties of all the parties concerned, and it was a suitable basis for negotiation.

² *Corfu Channel case, Judgment of April 9th, 1949: I.C.J. Reports 1949, p. 4.*

³ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21, annex IV.*

23. As to the distinction between merchant ships and warships, he pointed out that the navigation of merchant ships through straits must be guaranteed and facilitated as they were the carriers of trade and the means of peaceful international co-operation; but it was different with warships, whose mere passage through waters under foreign sovereignty implied a potential threat to the coastal State. The drafts in documents A/CONF.62/C.2/L.3, 11 and 15, like the draft submitted by the United States in 1971 and the one submitted by Italy in 1973, made no distinction between merchant ships and warships, and there was one very significant element in all those texts: the provision that submarines should navigate on the surface and show their flag had been dropped. It would seem then that the aim was to allow submarines to pass through the ocean space under the sovereignty of another State without that State's knowledge. Those proposals also had another characteristic in common, namely, they provided for freedom of overflight in transit for all types of aircraft, whether civil or military, over the straits. That would be tantamount to amending the Convention on International Civil Aviation, signed at Chicago in 1944,⁴ which required prior authorization of the State concerned for the overflight by military aircraft of its territorial sea, of which straits formed a part.

24. The régime of innocent passage applied strictly to navigation on the surface, and had nothing to do with the secret passage of submerged vessels or overflight. The 1973 eight-Power draft, like the Oman draft in document A/CONF.62/C.2/L.16, was very clear on those two points. In addition, the passage of warships was regulated by rules which, while allowing the right of passage, safeguarded the rights of the coastal State by requiring that the passage should be innocent and empowering the State concerned to require prior notification or authorization.

25. Mr. McLOUGHLIN (Fiji) said that in the light of the many helpful comments that had been made on the draft articles his delegation had submitted to the sea-bed Committee (*ibid.*, sect. 31) and of the proposals of other delegations, Fiji had felt it was necessary to submit a revised draft, which was to be found in document A/CONF.62/C.2/L.19. Without prejudice to any ultimate decision that might be adopted with regard to the régime of régimes applicable to the passage of foreign ships through straits, the draft articles were concerned with the concept of innocent passage both through the territorial sea and through straits. Consequently, if the régime of passage through the territorial sea proposed by his delegation was accepted, the same rules should be included in the régime of régimes applicable to straits.

26. The basic principles laid down in the original draft had been retained, but with slight modifications. For instance, prevention of infringement of the fisheries regulations of the coastal State was provided for in article 5. Similarly, the revised draft sought to establish the right of the coastal State to control fishery activities in its own waters and to take measures to prevent pollution under the 1973 International Convention for the Prevention of Pollution from Ships. The new draft articles proposed a clearer definition of the powers of coastal States in the regulation of passage through the territorial sea; it was not by accident that certain matters concerning the limitation of those powers had been omitted from those draft articles. They were, indeed omitted due to the fact that those matters were already adequately covered in other draft articles and did not require further elaboration.

27. Mr. NAJAR (Israel) said that his delegation, like many others, was concerned about certain tendencies to limit freedom of navigation through straits and other maritime spaces in a period characterized by a rapid development of maritime traffic and by growing economic and technological interdependence among all States. Without any intention of

disregarding the interests and rights of coastal States, of which his country was one, it had to be recognized that such tendencies could generate uncertainty and tension, which would serve the interests of no one. Accordingly, Israel specifically reaffirmed its support of freedom of navigation and overflight in all straits that linked two parts of the high sea or the high sea with the territorial sea of a foreign State.

28. His delegation had listened attentively to the classification of transit passage proposed by the delegation of the United Kingdom at the 11th meeting. That classification was more empirical than normative and the terms of the convention should be even more general, so as to ensure wider acceptance. His delegation could not, however, accept the régime proposed in chapter III, article 8, of the United Kingdom draft articles (A/CONF.62/C.2/L.3) for straits linking the high sea with the territorial sea of a foreign State, because it considered the régime unjustified.

29. Unfortunately, the United Kingdom proposal and that of six socialist States (A/CONF.62/C.2/L.11) introduced an unwarranted element of discrimination with regard to such straits. Unlike the proposals of other States, and in particular of the United States of America, the proposals of the United Kingdom and the socialist States infringed the principle of equality of treatment of all straits linking two parts of the high sea or the high sea with the territorial sea of a foreign State, a principle of equality which had, however, been embodied in article 16, paragraph 4, of the 1958 Geneva Convention.

30. The right of freedom of navigation through straits which represented the sole means of access from the high sea to the territorial sea of a State and the reverse was a fundamental principle of international law, which prevailed over any considerations of a geographical or other nature. Such straits must be open to free navigation and overflight.

31. A new type of discrimination against partially land-locked coastal countries linked to the high sea through a strait could hardly be introduced at a time when the Conference on the Law of the Sea was attempting to give wider rights to geographically disadvantaged countries, as called for in the Kampala Declaration (A/CONF.62/23) and stressed by the delegation of the Soviet Union at the 22nd plenary meeting. There was clearly a need to search for and apply an appropriate formula to ensure respect for, and to reaffirm, the principle of equality among the straits covered under article 16, paragraph 4, of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.

32. Mr. MESLOUB (Algeria) said that his country had mobilized all its resources to ensure the well-being of its people, to which end it was necessary to promote and develop broad international co-operation based on equality, respect and mutual benefit.

33. Algeria was a geographically disadvantaged country and, what was more, its access to the oceans was exclusively through straits. As a developing country bordering on a semi-enclosed sea and practically without resources, it should logically be subject to a special régime affording access to the oceans. That right of free transit should be similar to the right whose recognition was sought for the land-locked countries, because there would be no sense in recognizing the rights of geographically disadvantaged countries to the living resources of neighbouring economic zones if those countries were simultaneously denied the means enabling them to enjoy those rights.

34. With those considerations in mind, his delegation had felt it should prepare some draft articles (A/CONF.62/C.2/L.20) which, although they could be improved, would help the Conference to find a solution that was just and therefore acceptable to all States.

35. It should be noted above all that the draft articles had been drawn up in a special context, that of semi-enclosed seas like the Mediterranean, and would apply to only one type of

⁴United Nations, *Treaty Series*, vol. 15, p. 296.

straits, those joining two parts of the high sea and used traditionally for international navigation. They thus excluded the category of straits that linked the territorial sea of a State with the high sea.

36. A distinction was made between the régime of passage for merchant and similar vessels and warships and similar vessels. For the former, the régime of free transit should apply when they were travelling to and from ports in certain countries, like Algeria, for which the strait was the only passage. Naturally, recognition in that particular context of the right of free transit without any hindrance or restriction implied observance of certain rules intended to facilitate navigation.

37. Warships and similar vessels passing through such straits should be subject to the régime of innocent passage, since a sovereign State had the right to safeguard its legitimate security interests.

38. That distinction took care of the interests of the international community, which were protected by the right of free transit, and straits States' rights, which were protected by the concept of innocent passage. It also demonstrated the peaceful aspirations of the small and medium-sized countries, whose sole desire was to ensure the well-being and development of their peoples.

39. He emphasized the fact that the draft articles did not refer to the question of overflight, because his delegation shared the opinion that the topic should be dealt with not by the Conference, but by other existing bodies. He also stressed that the draft articles did not question the status of passage through straits that were already the subject of international conventions.

40. His delegation hoped that the proposals contained in document A/CONF.62/C.2/L.20 would be supported by all delegations; it was prepared to co-operate with them to resolve the crucial problem under discussion.

41. Mr. PRIETO (Chile) said that his delegation attached great importance to the question of straits used for international navigation, because that was the topic that had led the great Powers to submit their first joint projects, which had led to the establishment of the enlarged sea-bed Committee.

42. In view of the importance of the issue for the international community, it was essential to be very strict in defining the legal form in order to avoid any ambiguity over what was meant by straits used for international navigation.

43. His delegation had noted that the proposals submitted on item 4 by some delegations contained no precise definition at all, a fact that already had been pointed out in the sea-bed Committee by the Chilean delegation as well as the delegations of Canada, Norway and France.

44. Straits used for international navigation had been defined by international usage, by international jurisprudence in the April 1949 judgment of the International Court of Justice on the Corfu Channel case, and the 1958 Convention on the Territorial Sea and the Contiguous Zone.

45. In the Corfu Channel case the International Court of Justice had defined straits used for international navigation as straits that were used for international navigation between one part of the high seas and another part of the high seas. There were two very specific elements in that definition, the first being geographical and the second the fact that the straits were used for international navigation, in other words, the straits were indispensable and were therefore traditionally used for international traffic by ships of all countries.

46. Referring to article 16, paragraph 4, of the Convention on the Territorial Sea and the Contiguous Zone, he noted that it too contained the two basic elements in the judgment on the Corfu Channel case, namely, the geographical element whereby two parts of the high seas were linked and the traditional use for international navigation.

47. It was therefore essential that the convention to be drawn up by the Conference should define what was meant by straits used for international navigation. He suggested that the working paper on that question should include a foot-note indicating that straits used for international navigation referred to straits as defined in the judgment of the International Court of Justice on the Corfu Channel case and in article 16, paragraph 4, of the 1958 Convention on the Territorial Sea and the Contiguous Zone.

48. The CHAIRMAN said that he took note of the suggestion made by the representative of Chile.

49. Mr. OGUNDERE (Nigeria), noting that Nigeria was not a straits State, said that its interest in the matter under consideration related to the peaceful uses of the sea by the merchant vessels of all States, including Nigeria, and to the passage of warships through straits used for international navigation within the territorial sea of a State, subject to acceptable international legal norms. He agreed with the representatives of Canada (see 13th meeting) and Chile that the future convention should contain satisfactory definition of the expression "straits used for international navigation".

50. A few centuries previously, the seas had belonged to two great Powers, Spain and Portugal, and the oceans of the world and the *terra incognita* had been divided between them by papal bulls. Later, those two great Powers had been challenged by other great Powers, including Great Britain, France, the Netherlands, Germany and Belgium, which refused to accept the existing situation. Since then the super-Powers had displaced the great Powers in world influence. The first two United Nations Conferences on the Law of the Sea, held at Geneva in 1958 and 1960, had tried in vain to grant coastal States, including straits States, sovereignty over an area of sea adjacent to their coasts. The Third United Nations Conference on the Law of the Sea must now redress the historical imbalance which had granted a few States rights and advantages over and above those enjoyed by other States.

51. It was in the light of that historical background that his delegation had studied the draft articles contained in chapter III of document A/CONF.62/C.2/L.3, submitted by the United Kingdom, the draft articles in document A/CONF.62/C.2/L.6 submitted by Spain, and those in document A/CONF.62/C.2/L.11, submitted by the socialist countries.

52. His delegation, like other delegations, drew a sharp distinction between the passage of merchant vessels through straits which formed part of the territorial sea and the passage of warships and submarines through those straits. The draft in documents A/CONF.62/C.2/L.3 and 11 both postulated freedom of passage similar to the freedom of the high seas, referred to as the "right of transit passage" in document A/CONF.62/C.2/L.3 and as "freedom of navigation" in document A/CONF.62/C.2/L.11. His delegation agreed that all States should enjoy the right of transit passage or freedom of navigation through all straits lying outside the territorial waters of coastal States and therefore within exclusive economic zones or in the high seas, irrespective of whether the breadth of the territorial sea was fixed in the convention at 12 or 50 nautical miles. True to the principles proclaimed in the Declaration of the Organization of African Unity on the issues of the law of the sea, contained in document A/CONF.62/33, his delegation attached great importance to international navigation through straits that formed part of the territorial sea of a State and, in principle, supported the régime of innocent passage subject to further clarification concerning the definition of the régime.

53. He described some of the clarifications that would have to be made in such a definition. Under article 14, paragraph 6, of the 1958 Convention on the Territorial Sea and the Contiguous Zone, submarines were required to navigate on the surface and to show their flag while exercising the right of innocent passage through the territorial sea. Also, under article 15, the coastal

State must not hamper innocent passage through the territorial sea, and under article 16 the coastal State could take the necessary steps in its territorial sea to prevent passage which was not innocent.

54. The draft articles submitted by the United Kingdom in chapter II, part III, of document A/CONF.62/C.2/L.3 were very useful, although in his view article 16 should end at paragraph 2 (c). Article 17 of that draft, which only reproduced paragraph 3 of article 16 of the Convention on the Territorial Sea and the Contiguous Zone, should include the other paragraphs of that article, thus taking fully into account section III of the Convention, relating to the right of innocent passage.

55. He agreed that all reference to freedom of overflight should be deleted in the drafts of the United Kingdom and the socialist countries.

56. His delegation had listened attentively to arguments adduced to link passage through straits with the national security of a State or group of States, and felt that the concept of State power had changed since the Charter of the United Nations had entered into force. He said that national security arguments in favour of freedom of passage through straits were untenable in international law unless they were based on a treaty entered into by the straits States guaranteeing freedom of navigation through the straits to all States parties to the treaty.

57. One of the positive elements of the proposals submitted by the United Kingdom and by the socialist countries was the provision regarding responsibility of the flag State for damages caused by ships passing through straits and the territorial sea. He congratulated the sponsors of both drafts.

58. Mr. MATI (Albania) said that he supported the principle of the sovereignty of straits States. States had the sovereign right to establish the régime necessary for the protection of their interests while, at the same time, they should permit international navigation without any discrimination whatsoever.

59. In that connexion, he observed that there were two trends representing two groups of States. The first group consisted of coastal States which felt threatened by the expansionist and imperialist policy of the super-Powers and claimed sovereign rights over their territorial waters, including straits. The second was made up of the two super-Powers, which had built up considerably their armies, navies and air forces, and advocated free passage through straits. His country, like all peace-loving countries, supported the former group of States and would oppose the imperialist policy of the super-Powers.

60. Passage through straits should be effected in conformity with the laws of the coastal State, which would issue the appropriate authorization to warships and military aircraft. As for merchant vessels, it was unanimously agreed that they should be allowed to pass through straits without restrictions, but the Coastal State could establish any regulations it deemed necessary to protect itself against threats to its sovereignty which might result from the use by certain Powers of merchant ships for the purpose of espionage.

61. The defence of the sovereignty of the coastal State over the waters of straits was a matter of principle which, because of the threat posed by the expansionist policy of the super-Powers, involved security matters.

62. The question of straits not used for international navigation was an internal affair of the States directly concerned and they themselves should settle it.

63. Mr. AL-SAUD AL-SABAH (Kuwait), speaking first on behalf of Iraq, the United Arab Emirates, the Libyan Arab Republic, Saudi Arabia, Qatar and Kuwait, said that the term "straits used for international navigation" should be strictly confined to straits which connected two parts of the high seas. Because of that view, the Governments on whose behalf he was speaking had not acceded to the Convention on the Territorial Sea and the Contiguous Zone of 1958, since they opposed the

interpretation of that concept in article 16, paragraph 4, of that Convention, which treated all straits alike. That provision had been politically motivated by the desire to accommodate specific interests in a particular region.

64. Speaking on behalf of his own delegation, he said that the attitude of States towards the question of straits was largely determined by geographical considerations and political realities which divided States into three main categories: States bordering on straits; small Powers which had a vital interest in commercial navigation through straits; and great Powers which, in addition to their interests in commercial navigation, claimed special privileges for warships and military aircraft. The straits State had a right to security, order and the protection of its coasts against pollution and other hazards. At the same time the legitimate right of merchant vessels of the international community to free and unimpeded passage through straits used for international navigation should be recognized.

65. Innocent passage was currently determined subjectively by the coastal State, which could decide arbitrarily if passage was prejudicial to peace, order or security. Objective criteria should be formulated which would guarantee freedom of transit to all merchant vessels, while at the same time safeguarding the basic interests of the coastal State.

66. Nevertheless, different criteria should be applied to warships and military aircraft in view of the risk involved in their passage. The concept of prior notification could serve as a compromise formula.

67. Special attention should be paid to the problem of States whose only access to the ocean was through straits. The commercial navigation of those States depended totally on the concept of freedom of transit. The commercial interests of those geographically disadvantaged States should be protected. His delegation intended to present a detailed text relating to the concepts he had just discussed.

68. Mr. YANKOV (Bulgaria) said that, since his country faced a semi-closed sea and its only access to the oceans was through international straits, it attached great importance to the establishment of an equitable and viable régime of transit through straits used for international navigation. The functional approach of the *jus communicationis*, which had always been followed and which was a fundamental part of maritime law, led to a significant differentiation between the régime of the territorial sea and that of straits used for international navigation. That differentiation could not be disregarded on the basis of the contention that those straits were part of the territorial sea: such reasoning was not necessarily founded on either law or practice.

69. Conscious of the legitimate rights of the coastal States, Bulgaria and the five other delegations which had sponsored the draft articles circulated in document A/CONF.62/C.2/L.11 had sought to achieve a fair balance of all interests in a solution which to a large extent was a departure from the traditional concept of freedom of the high seas in respect of straits used for international navigation and envisaged a régime of regulated free and unimpeded transit. The right of flag States to freedom of navigation carried explicit counterpart requirements and obligations. For example, different paragraphs of the draft articles contained provisions stating that warships in transit should not engage in military or other activities; that the coastal State should have the right to designate sea lanes and traffic separation schemes; that ships in transit, in particular supertankers, should take all precautionary measures to avoid causing pollution of the waters and coasts of the straits; that the shipowner or the person liable for damage to the coastal State, including in the last resort the flag State, should assume responsibility for such damage; that in recognition of its economic interests the coastal State should have sovereign rights over the waters, sea-bed and living and mineral resources of the straits; that the coastal State should not place

in the straits any installations which could interfere with or hinder the transit of ships.

70. Those provisions reflected the great efforts which had been made to reconcile the traditional régime of freedom of the high seas applied to straits used for international navigation with the requirements of coastal States.

71. It had been argued that the régime of free transit through straits should apply to merchant ships only and that prior authorization by the coastal State should be required for the transit of warships. However, that criterion might give rise to serious problems by permitting the granting or refusal of access to straits for subjective reasons, which might very often be arbitrary or political. It was inadmissible that a very limited number of States bordering straits used for international navigation should assume such discretion with regard to the global system of navigation and the military balance in the oceans. International transport and communications and world peace and security were of vital concern to the international community as a whole. Consequently, their control could not be left in the hands of a few States. On the contrary, it should be based on an objective and equitable régime which would provide a viable international legal framework in which they would function.

72. With regard to overflight, the régime of free passage envisaged in article 3 of the draft articles would apply *mutatis mutandis*. That régime was closely connected with the régime of straits, as it was an important part of the global system of communications. Consequently, there was no justification for the view that the question of overflight was not within the scope of the law of the sea, and the convention to be prepared should contain some basic principles on that issue. If necessary, there might be a treaty dealing entirely with aerial navigation.

73. His delegation supported the proposal that the future convention should contain a reference to the Charter of the United Nations. Furthermore, it was prepared to take into account reasonable proposals which would lead to genuine negotiations in which the régime for straits would be considered jointly with the régime for the territorial sea, the concept of an economic zone, and the international régime for the seabed and ocean floor beyond the limits of national jurisdiction.

74. Mr. AL-QADHI (Iraq) said that his delegation did not agree with article 3 in the draft articles submitted by Spain in document A/CONF.62/C.2/L.6. With regard to the draft articles contained in document A/CONF.62/C.2/L.11, he felt that article 1 was a safeguard and ensured freedom of navigation through straits linking two parts of the high seas while taking account of the interests of coastal States. That article took into consideration the aspirations of the world community. The criterion on the basis of which it had been formulated was an objective one and took cognizance of the world community's need to develop international trade and communications, while accommodating the interests of all States concerned. His delegation supported that article because it felt that freedom of navigation was one of the basic principles of the law of the sea.

75. Nevertheless, his delegation had reservations concerning article 2 of the proposal and also with regard to chapter III, article 8, of the United Kingdom draft in document A/CONF.62/C.2/L.3 and he reiterated what had been stated by the representative of Kuwait on behalf of Iraq and other States.

76. He appealed to the United Kingdom to delete article 8 of its draft. Similarly, he asked the six Powers which had sponsored the draft articles contained in document A/CONF.62/C.2/L.11 to delete article 2 of their text.

77. Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) said that his country had joined in sponsoring the draft articles in document A/CONF.62/C.2/L.11 because it attached great importance to the problem of straits used for international navigation. His delegation had already explained

its position in that respect during the preparatory work of the sea-bed Committee.

78. Some straits were the shortest and most convenient route between seas and oceans and were the only way for States to communicate, co-operate in different spheres and develop economic, commercial and other relations. It was therefore wrong to say that the maintenance of free transit through straits used for international navigation was of interest only to certain States, even though his delegation was fully aware that all countries did not use the ocean space and straits to the same extent at the present time.

79. When establishing principles for international navigation, it was important to remember that they should be valid for at least a decade; it was therefore necessary to take future prospects into account, since international straits were becoming increasingly important for the development of the international navigation of all countries and for the encouragement of international relations.

80. Although some countries had access to the sea without passing through any strait, many other countries, such as the Mediterranean and the Black Sea countries, depended on such passage to gain access to the sea.

81. His country attached particular importance to the articles contained in document A/CONF.62/C.2/L.11, especially article 1, and insisted that freedom of navigation and overflight in the air space traditionally used by foreign aircraft for transit between one part of the high seas and another part of the high seas must be recognized.

82. The Ukrainian SSR was fully aware that it was equally important to ensure the legitimate interests of the coastal States concerned. The draft articles included detailed provisions in that respect and could constitute a good basis for the future convention, taking account of the interests of all States.

83. The concept of innocent passage could not be the basis for a satisfactory arrangement. That concept could not be applied to straits which formed part of the high seas. Ships passed from one part of the high sea to another through those waterways, which were often their only means of access to the ocean; navigation in the straits could therefore not be subject to unilateral rulings by coastal States.

84. Coastal States must, of course, have some control over navigation through the straits, but such control should be compatible with the interests of international navigation. To grant coastal States absolute power of control did not safeguard equality and justice, since such a step could lead to discrimination against States with which the coastal States did not maintain good relations.

85. Those advocating the principle of control by the coastal State based their opinion on the increasing threat represented by the strategic interests of the navies of the super-Powers. It should, however, be clearly stated that the coastal State's control over the straits would not prevent an increase in the number of warships, since most countries possessing such fleets did not have to pass through straits to reach the oceans. That problem could only be solved by adopting the proposal of the Union of Soviet Socialist Republics concerning general and complete disarmament. The régime for the territorial sea could not serve as a basis for that for straits.

86. With regard to the statement made by the representative of China at the preceding meeting, that country was continually holding up the work of the Conference by its insistence on making factious statements. For instance, it had referred to the activities of warships of other countries as if it itself possessed none. It might be asked therefore what China's position was on disarmament. The truth was that when the Soviet Union, supported by the majority of developing countries, had proposed that a conference on general disarmament should be convened, China had raised objections; when the idea of a declaration on the prohibition of nuclear weapons had been discussed in the

General Assembly, that idea had been supported by the developing countries, but not by China; China had also opposed the reduction of defence budgets, which would have freed resources to help the developing countries.

87. Mr. JUNIUS (Liberia) said that, as already indicated in the statement made at the 33rd plenary meeting, on 9 July, Liberia endorsed freedom of passage through straits used for international navigation. For the time being, his delegation would not press for a régime of "free" as opposed to "innocent" passage, since those terms had not yet been satisfactorily defined by the Committee.

88. The Conference might perhaps alter a large part of the law of the sea, but he emphasized that the law in question was not that embodied in treaties on the subject, nor was it that laid down in conventions which had not yet entered into force. The fundamental law of the sea that currently prevailed was grounded on the concept of *mare liberum*, which had been accepted for centuries by all States as a cardinal tenet of the customary law of nations.

89. In the view of his delegation, the obligation of those who wished to assert the necessity for an extended control of navigation was to adhere to completely objective safeguards, established by international agreements, with specific guarantees against the discriminatory application of control measures.

90. All that his delegation was asking was that those who advocated an international agreement with a view to extending their marine territory so that it would encompass international straits should accept in the same agreement firm commitments to respect the rights of those countries whose vessels traversed the straits, on the basis of freedom of the seas.

91. Mr. FRASER (India) recalled that, in its statement at the 27th plenary meeting, on 3 July on the question of straits, his delegation had expressed its concern for the development of its merchant fleet and had declared its support for proposals which ensured smooth and unimpeded passage of merchant ships, and of all other vessels, whether on the high seas, or through straits used for international navigation, or through other traditional channels of navigation. It was obvious that passage through straits used for international navigation was absolutely necessary for international communications and economic development, although admittedly passage through territorial waters might simply be a matter of convenience. For that reason, any obstacle to passage through straits might have very far-reaching consequences in terms of transport costs and time.

92. There had been some proposals that merited careful consideration, and among them it was pertinent to quote those that endeavoured to strike a balance between the interests of flag States and the interests of coastal States or States bordering on straits. The draft articles contained in chapter III of the draft articles presented by the United Kingdom (A/CONF.62/C.2/L.3), and the amendments to them proposed by Denmark and Finland (A/CONF.62/C.2/L.15) might be found useful in that respect.

93. The six-Power proposal in document A/CONF.62/C.2/L.11, and the proposal made by Oman in document A/CONF.62/C.2/L.16, were also of interest.

94. In the view of his delegation, it was necessary to lay down provisions which would impose a duty on the flag State to ensure protection of the interests of the coastal States concerned—a consideration of vital importance for the security of the coastal State and for the protection of its marine environment. Similarly, provisions would also have to be laid down to ensure the expeditious and uninterrupted passage of ships, and others that would impose a duty on transiting ships to refrain

from engaging in activities which were not related to simple passage, such as fishing. Those provisions should also prohibit warships from engaging in any exercises or manoeuvres, using weapons, launching or taking on board any aircraft and carrying out scientific research. As had been suggested by the representative of Singapore, a suitable régime might be evolved for the passage of submarines which would take into account the need for them to navigate on the surface while in transit through straits.

95. Clearer provisions would also be needed for the prevention and control of pollution by ships, and to establish the responsibility of the flag State in respect of damage resulting from non-compliance with the laws of the coastal State.

96. His delegation also wished to revert to the proposals submitted by a number of delegations in the sea-bed Committee, and to the variants thereon, and he expressed the hope that the Chairman would make an assessment of the various proposals, in order to provide a basis for consideration of a question of such importance to coastal States, to States bordering on straits, and to the international community in general.

97. Mr. GODOY (Paraguay), supported by Mr. ARIAS SCHREIBER (Peru), speaking on a point of order, formally proposed that, under rule 26 of the rules of procedure, the Committee should limit speeches to a maximum of 15 minutes.

98. The CHAIRMAN said that, if there were no objections, he would take it that the Committee agreed to limit speeches to a maximum of 15 minutes.

It was so decided.

99. Mr. LING Ching (China), speaking in the exercise of his right of reply, said that the fact that his delegation had supported the proposal that a clear distinction should be drawn between merchant vessels and warships, thus revealing the real purpose of the super-Powers in advocating freedom of navigation, had induced the delegation of the Ukrainian Soviet Socialist Republic to defend its position by sophistry.

100. On the subject of disarmament, China was opposed to indiscriminate "general disarmament" and favoured genuine disarmament, which must be, first of all, the disarming of the super-Powers. China refused to become a party to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water⁵ because it wished to eliminate the nuclear monopoly and nuclear blackmail of the super-Powers. China's nuclear tests were for the sole purpose of self-defence and it had declared that it would never be the first to use nuclear weapons. That pledge remained valid, and the super-Powers had not yet dared to undertake such a commitment.

101. China had also settled its boundary questions with most of its neighbouring countries and had not a single soldier stationed abroad, or a single military base. By contrast, there were those who were engaged in frenzied arms expansion and who were constantly dispatching their warships thousands of miles off to interfere in the internal affairs of other countries, resorting to every possible means of securing military bases in other countries, conducting military exercises in the off-shore areas of other countries and plundering their resources. Those were facts that had been denounced by world public opinion and had called forth protests from the Governments of several countries; the truth could not be distorted by sophistry.

102. Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) speaking in the exercise of his right of reply, said the real fact was that the representative of China had not referred to any of the questions raised by his own delegation.

The meeting rose at 7.00 p.m.

⁵United Nations, *Treaty Series*, vol. 480, p. 430.

15th meeting

Thursday, 25 July 1974, at 4.20 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Straits used for international navigation (concluded)

[Agenda item 4]

1. Mr. BA-ISSA (Democratic Yemen) said that the item under discussion was vitally important to his country, situated as it was south of the Arabian Peninsula, with territorial waters extending to the strategic strait of Bab El Mandeb at the entrance of the Red Sea, innocent passage through which had always been guaranteed for all peaceful purposes. That strait would gain in importance with the reopening of the Suez Canal. However, passage through such narrow straits could not be without regulation or control, both for the safety of the passage itself and for the security of the coastal States. The latter were greatly concerned at the possibility of misuse of the right of innocent passage; their territorial integrity and political independence must in no way be compromised.
2. Democratic Yemen overlooked the Indian Ocean, which he agreed ought to be a zone of peace, free from military bases and threats of war. His country was concerned at the massive naval manoeuvres by the imperialist countries, which constituted a direct threat to the security of the coastal States. Such security should be given priority by the international community, especially since developing coastal States were not in a position to challenge the military might of the great Powers. It was in the light of those criteria that his delegation would decide on its position on the draft articles before the Committee.
3. Although no one had yet explicitly challenged the right of the coastal States to exercise sovereignty over their territorial waters so as to ensure their integrity and security, his delegation was concerned at the qualified statements made and ambiguous terms used to conceal true intentions and render the concept of innocent passage meaningless in practice.
4. Much had been said about the need to strike a balance between the legitimate interests of the coastal States and those

of the international community. What, in fact, were the interests of the international community, and how was the balance to be attained? The Conference must not conclude a convention imposed by a few great maritime Powers, acceptable to no one. The key to success lay in whether there was genuine political will on the part of the big Powers.

5. His country differentiated between commercial vessels, which should enjoy the right of innocent passage, and non-commercial vessels, including warships and submarines, which by their very nature had nothing to do with international trade. Such vessels should require prior authorization by the coastal State and should observe the rules and regulations of that State. That was the prerequisite for the maintenance of peace, good order and security. The distinction drawn was not arbitrary: it was not against States or ships but against intentions and policies.

6. His delegation also attached great importance to the prevention of marine pollution, particularly in straits open to heavy traffic, which should be regulated so as to obviate dangers to coastal States and the international community as a whole.

7. His delegation believed that the air space covering the territorial sea, including the straits used for international navigation, formed an inseparable part of the territorial sea and was therefore under the exclusive jurisdiction of the coastal State. Overflight over such waters should be regulated through bilateral agreements between the coastal State and other States concerned.

8. International navigation and trade must be maintained and secured for the benefit of all the peoples of the world. His delegation would oppose any interference with that principle.

9. The CHAIRMAN announced that the Committee had concluded its discussion on the item under consideration.

The meeting rose at 4.35 p.m.

16th meeting

Friday, 26 July 1974, at 11.35 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Continental shelf

[Agenda item 5]

1. Mr. TUERK (Austria) said that the results of the Committee's work had so far not been as good as might have been expected or desired and he confirmed his delegation's readiness to do everything it could to help the Committee reach generally acceptable solutions.
2. The item before the Committee was of particular concern to his country. His delegation hoped that the new law of the sea would accommodate the legitimate interests of all States. That had not always been the case for certain groups of States, as could be seen from the legal norms established at Geneva in 1958, in the Convention on the Continental Shelf,¹ which to-

tally disregarded the legitimate interests of the land-locked countries. That was understandable considering that the Truman Proclamation of 28 September 1945, on which the Geneva text had been based to some extent, had emanated from a country which did not have to take into account the interests of any land-locked States in its geographical area. In view of the political situation existing at that time, any misgivings which some countries might have had concerning the principle enunciated in the Proclamation had not been voiced. Other coastal States had followed the example set in the Proclamation, and their unilateral declarations had been given legal sanction by the 1958 Geneva Convention. He noted that of the 86 States participating in the First United Nations Conference on the Law of the Sea, in 1958, only 10 were land-locked, while of the 149 States invited to the current Conference 29 were

¹ United Nations, *Treaty Series*, vol. 499, p. 312.

land-locked. His country, like almost two thirds of the States participating in the current Conference, had not become a party to the Geneva Convention on the Continental Shelf.

3. The continental shelf had been defined as the zone around the continent extending from the low-water line to the depth where there was usually a marked increase of declivity to greater depth. Geophysical research had shown that the continental margin was an extension of the same nature as the continent itself. It could therefore be said that the continental margin was a submerged area of the continent and not just of its coastal fringes. The assertion that the continental shelf might be regarded as an extension of the land mass of the coastal nation and thus naturally appurtenant to it seemed correct only in cases where the coastal State was one of continental dimensions with no land-locked countries in its vicinity. The right to explore and exploit the natural resources of the continental shelf should not therefore be reserved for coastal States but should be accorded on an equitable basis to land-locked States in their respective geographical regions. Greater account should also be taken of the legitimate interests of other geographically disadvantaged States.

4. With regard to the delimitation of the continental shelf, he noted that in 1956 the International Law Commission in its draft articles concerning the law of the sea² had added the exploitability criterion to the depth criterion and that both criteria had been included in the 1958 Geneva Convention. His country could not accept reconfirmation of the exploitability criterion in the new convention because it implicitly contradicted the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction³ by voiding of much of its substance an area whose resources were the common heritage of mankind. His delegation had stated in the general debate at the 38th plenary meeting that it was essential for the Conference to create an economically meaningful international area; the only way to do justice to the concept of the common heritage of mankind would be to set up an international area with enough significant resources left to be shared among all States in the near future. Accordingly, his country preferred a distance criterion not exceeding 200 miles, for the inequity of the depth criterion had been an important reason why a number of States had extended their jurisdiction into the high seas.

5. If the Conference should reach agreement on the establishment of an economic zone, his delegation would see no need to retain the concept of the continental shelf, since the legal content of the term "continental shelf" should be absorbed by the new legal notion of "economic zone". Such a development would clarify the legal framework of matters relating to the sea-bed.

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

6. Mr. ZELAYA UBEDA (Nicaragua) said that the question of the continental shelf required frank examination and could be approached from two points of view. First, the 1958 Geneva Convention had created a legal fiction by dividing the submarine part of a territory into two parts, one situated below the territorial sea, the other situated beyond an undefined territorial sea where the coastal State would exercise sovereign rights with regard to the exploration and exploitation of natural resources. That legal fiction had prevented some countries, including his own, from acceding to the Convention. Secondly, when the various proposals concerning the continental shelf submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction were considered in the context of the notions of territorial sea, patrimonial sea and economic zone, it could be seen

that the legal fiction had been retained: some ideas had been added which obscured the concept of the continental shelf, while others were open to interpretations which would extend the limits imposed on the coastal State with regard to its submerged territory to such a degree as to be tantamount to acceptance of a further partition of its territory and sovereign powers.

7. His delegation thought that all those ambiguous concepts should be made clear; the new law of the sea should have a rational foundation which would make it intelligible. The existing concept of the continental shelf was similar to an assertion that a person's foot was part of his body if he was barefoot, whereas, when shod, his foot was not part of his body but was identified with the shoe.

8. His country's laws maintained that the continental shelf was a part of its national territory. In view of the recognized special nature of the submerged area of the territory of Central America in the Caribbean, the listing of the characteristics of that area would show that his country's legal tradition of territoriality for the shelf dated from the distant past. Everything that was essential for the territorial integrity and physical, economic and institutional security of a country must be under its jurisdiction and control. That fundamental right was limited only by the equal right of another State. His country could easily demonstrate that its continental shelf in both oceans bordering its coastline—and in the Pacific up to a distance of 200 miles from its coasts—met that criterion fully. History had demonstrated the strategic value of some of the characteristics of his country's continental shelf. Moreover, everyone was aware that its emergent territory did not extend very far and had few resources; thus his country needed the resources of its continental shelf for its development, and the use of those resources was being fully integrated in the life of the country. It needed to complete that integration by establishing a régime which would guarantee rather than weaken it.

9. Some of the proposals concerning the continental shelf, the patrimonial sea and economic zone gave rise to deep concern. Either the economic zone would be limited to the water column situated between the outer limit of the territorial sea of 12 miles and the outer limit of 200 miles, or the concept of the continental shelf established in 1958 would be further weakened. His delegation preferred the former alternative.

10. It was inconceivable that the economic zone or patrimonial sea could be interpreted as including areas of the sea-bed which formed part of a country's continental shelf. That would make the problem more complicated and unless the ambiguity was removed, it would give rise to many reservations. Unless the Committee established that the economic zone or patrimonial sea had a national character, it would be creating yet another legal fiction. Some of the proposals would have serious economic effects and must be limited to certain resources and to a part of the water column of the economic zone. Other proposals, such as that of historic use, divested the concepts of the economic zone and patrimonial sea of the role incumbent upon them as instruments of development. The granting to international bodies of powers of jurisdiction and inspection over the national economic zone was only acceptable in a very limited area and possibly should not go beyond advisory functions. With regard to the question of compensatory measures in favour of the land-locked and other geographically disadvantaged States, his delegation thought that geographical proximity could not be the sole criterion, and it would not be fair to compel States with few resources to share them with others, while the rich countries enjoyed abundance.

11. Failure to reach agreement on certain basic aspects of the issues could impede the general work of the Conference. His delegation thought that some decisions were more basic than others and that it would help the work of all the Committees if they were dealt with separately in a partial and provisional

² Official Records of the General Assembly, Eleventh Session, Supplement No. 9, para. 33.

³ General Assembly resolution 2749 (XXV).

consensus. Accordingly, his delegation had submitted a working document (A/CONF.62/C.2/L.17). It requested that at least the first four paragraphs should be incorporated in the informal working paper on the continental shelf to be prepared by the officers of the Committee, but stressed that all the proposals formed an integral whole.

12. His delegation had tried to set out a series of basic points leading towards a global agreement or the basic political framework for universal solutions. An essential concept was that adjoining the traditional national territory there should be a national zone made up of three separate elements; in it the coastal State would have the right to exercise separate jurisdictional powers to safeguard its own interests and the legitimate interests of the international community; the coastal State would be the guarantor of the international community, which, in its turn, would guarantee to the coastal State the inviolability and integrity of the national zone; finally, the working document dealt with the question of rights and duties in the national zone, including the questions of straits and landlocked and geographically disadvantaged States.

13. Mr. CHOWDHURY (Bangladesh) said that there were three issues before the Committee: the legal basis of the rights of coastal States over the continental shelf; the definition of the continental shelf; the relation of the continental shelf to the economic zone. In 1969, in paragraph 19 of its judgment on the North Sea continental shelf,⁴ the International Court of Justice had held that the continental shelf was the natural prolongation of a State's territory and that the rights of the coastal State with regard to that area existed *ipso facto* and *ab initio* by virtue of its sovereignty over the land. Although those rights were embodied in the 1958 Geneva Convention, they existed independently of the Convention by virtue of their foundation in customary law. The International Court had in effect underscored the importance of the geological factor, which must be taken into account in any definition of the continental shelf.

14. The definition of the continental shelf in article 1 of the 1958 Convention lacked precision. The criterion of exploitability was open to various interpretations; by stressing the geological and the geographical factors, the International Court had not supported that criterion. The definition must be made more precise; the legal notion of the continental shelf must be different from the geological notion. In his delegation's view, the definition should be expressed in terms of depth, and the continental shelf should include the continental slope and rise. That view was supported by the judgment of the International Court that the coastal State's jurisdiction over submerged areas extended not only over the continental shelf but also over the slope and rise, on the grounds that they were a natural prolongation of the coastal State's territory.

15. The Conference could not refashion nature. Some coastal States had a better continental margin than others. The need was to agree on a more practical, rational, just and equitable definition of the continental shelf.

16. His delegation thought that the régime for the continental shelf should be considered together with that for the economic zone, for it would depend on the nature and characteristics of the economic zone, including the rights and jurisdictions of coastal States with regard to all the natural resources thereof.

17. Mr. ORION (Israel) said that the doctrine of the continental shelf was firmly established in modern international law and that nothing affected the legal status of the superjacent waters as high seas or of the air space above those waters. The freedom of the seas must be preserved and any interference with freedom of navigation and overflight must be kept to the absolute minimum.

18. Underlying the Truman Proclamation of 1945 was the consideration that the continental shelf was regarded as a

single morphological unit joined with the continental area of a given State; hence the coastal State enjoyed sovereign rights over it. Technological advances since the 1958 United Nations Conference on the Law of the Sea required a re-examination of the law and new agreements with a view to preventing conflicts. His delegation, which agreed that the rules for the delimitation of the outer limit of the continental shelf should be revised, believed that the criteria of depth and exploitability were now outdated. Israel, a country with a narrow shelf and a short coastline, was unable to support any criterion based on depth as the seaward limit of the continental shelf and it preferred a fixed distance from the shore as an alternative to exploitability.

19. It was advisable to permit each coastal State to define the outer limit of its continental shelf up to an agreed maximum measured from the baselines in order to help the disadvantaged coastal States to exploit the sea-bed within the area designated for the continental shelf. In a semi-closed sea like the Mediterranean, the problem of delimiting the continental shelf for coastal States, whether adjacent or opposite to each other, was that their shelves were likely to overlap. Those States should, therefore, respect each other's sovereignty and conduct necessary consultations in order to arrive at a reasonable agreement on the boundary of the coastal sea-bed area of each State, particularly in accordance with the principle of equity as stated by the International Court of Justice in 1969 with respect to the continental shelf of the North Sea.

20. Since the proposed economic zone of 200 miles would cover the continental shelf, there was some question whether to deal with the issue at all. His delegation believed that the two items should be dealt with separately for the time being, because the economic zone concept was still being formulated and its full development would require time and experience, while the continental shelf was an established institution. With regard to the sea-bed and non-living resources, his delegation was still studying whether exclusive zones would be a practical proposition in Israel's part of the Mediterranean Sea; however, it did not wish to prejudice decisions with respect to the wide oceans where wide allocations were feasible.

21. It was generally recognized that only the developed States currently possessed the financial and technological competence for the exploitation of the submarine resources of the oceans. Accordingly, his delegation would suggest that the United Nations Development Programme should develop programmes to help developing countries to benefit from the resources of the deep sea adjacent to their continental shelf by providing research and technical facilities. His delegation understood that that zone was being limited to the non-living resources of the sea-bed and subsoil underlying a belt of sea up to a reasonable distance seaward of the outer limit of the continental shelf. That would not affect the character, as high seas, of the superjacent sea, nor the status of the air space above it.

22. He wished to recall that his delegation had not taken part in the work of the sea-bed Committee and, since it was speaking on the item for the first time, it reserved the right to speak again, particularly on new proposals introduced at the Conference.

23. Mr. HERRERA CACERES (Honduras) said that in 1950 the Honduran Government had issued its first declaration on its rights over the continental shelf and the waters which covered it in both oceans. Honduras considered that it had jurisdiction over the riches or resources both in the soil and subsoil and in the superjacent waters and, accordingly, had the right to establish demarcation zones for the protection of those resources. His delegation could not consider the right of the State over the resources in its submarine areas separately from the rights of the State over the biological resources in the water column, since both were closely related.

24. In Honduran legislation, the concept of the continental shelf was similar to that stipulated in the Geneva Convention

⁴ *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 3.*

on the Continental Shelf. However, Honduras was not a party to that Convention and, consequently, its right over the resources of that area was in no way limited by the Convention with respect to its use of the term "natural resources", since Honduras had stated its sovereign rights over the totality of those resources.

25. The continental shelf of Honduras was determined both by depth and exploitability. His country was prepared, however, to negotiate a precise limit for that shelf to be fixed taking into account the fact that the shelf was a natural prolongation of the country's territory up to the limit of the ocean basin or abyssal depth. The limit might be established without prejudice to the retention by States with narrow shelves of sovereign rights over a submarine area of 200 nautical miles, supplementing their sovereign rights over the superjacent waters under the terms of the patrimonial sea, economic zone, or whatever else might be established in the future convention.

26. With respect to the delimitation of the continental shelf, as stated by the International Court of Justice in paragraph 81 of its judgment on the North Sea continental shelf the use of the equidistance principle was not a mandatory rule of customary law. While an equidistance rule could be considered mandatory with respect to the delimitation of the territorial sea, it could not be applied to the shelf, which was a submerged land territory extending over an area well beyond the limits of the territorial sea. Consequently, if application of the rule of equidistance were made mandatory, not only would there be significant deviations, produced by certain coastal configurations, but it would mean running counter to the very nature of the soil and subsoil, which were the extension of a State beneath the territorial sea and should not, therefore, be allowed to obstruct the nature prolongation of the territory of another State.

27. His delegation believed that the criterion of equidistance could be retained as an optional criterion for the lateral delimitation of the continental shelf and that the only criterion which should be laid down in the draft convention to be negotiated was the need for agreement. In the absence of such agreement, the delimitation should be determined through the peaceful means provided in Article 33 of the United Nations Charter.

28. His delegation's position was closely related to that which it would express in connexion with the exclusive economic zone beyond the territorial sea in which the coastal State had functional competence.

Mr. Aguilar (Venezuela) resumed the Chair.

29. Mr. UNIS (Libyan Arab Republic), citing the criteria for the definition of the continental shelf laid down by the 1958 Geneva Convention said that the theory based on the 200-metre isobath was inadequate and often inequitable, since in some countries that limit fell within the territorial waters and, in others, the sea was so shallow that the isobath was at a distance exceeding 200 miles. Furthermore, technological possibilities for exploitation varied from day to day. Since two of the criteria of the 1958 Convention were inadequate and inequitable, that left only the standard distance, for example, 200 miles. That would give the same breadth of sea to the different coastal States and would lead to the concept of the economic zone, which had been approved by the Organization of African Unity (OAU) in its Declaration on the issues of the law of the sea (A/CONF.62/33). OAU had agreed that that zone, with a maximum breadth of 200 miles, should be under the sovereignty of the coastal States with respect to the exploitation and exploitation of living and non-living resources.

30. In order to delineate the limits of area allocated to each of the adjacent or opposite States, any one of a combination of delimitation methods appropriate for arriving at an equitable subdivision of the economic zone might be applied, taking into consideration the historical and geographical conditions and special circumstances.

31. Mr. GODOY (Paraguay) said that his country had not acceded to the 1958 Convention, which had recognized, as criteria for delimiting the continental shelf, distance and depth as far as it admitted of exploitation. In other words, that Convention had set an imprecise limit. The idea of a 200-mile economic zone meant that the rules governing the continental shelf were no longer in force, since that area would be covered by the patrimonial or territorial sea.

32. Mr. ARIAS SCHREIBER (Peru) said that Peru had a very narrow continental shelf, which was one of the reasons why it had extended its sovereignty to a limit of 200 miles over both the adjacent sea and the soil and subsoil. Other Latin American countries had adopted that criterion because the geophysical and geological characteristics of their coasts were similar. For those countries, therefore, the concept of the continental shelf had no standing of its own, but fell within the legal régime of the national marine area. Peru's interests were therefore protected by the recognition that the coastal State's sovereignty extended to a maximum of 200 miles both on the sea and beneath it. In defence of those interests, his delegation would have to support that limit in all the areas to which it applied.

33. Peru's position on the law of the sea was based on respect for the sovereign rights of other States over their respective adjacent seas and over the submerged prolongations of their territories, even if they exceeded 200 miles. No country had stronger claims than the coastal State over any part of its continental shelf, since the shelf constituted a natural and indivisible part of its national territory.

34. His delegation wished to confirm that, with respect to the precise limit of the coastal State's sovereignty, Peru supported the criterion of the lower outer edge of the continental shelf bordering the abyssal plain. In that case, as in others, regional solutions should be adopted in order to take into account the characteristics of each area of application. Failing that, the Conference would be making the mistake of attempting to impose arbitrary limits which would be against nature and unacceptable to the respective countries.

35. Finally, with respect to the content and scope of the rights to be exercised over the continental shelf, his delegation agreed generally with the relevant provisions of the draft articles submitted by the delegation of Argentina to the sea-bed Committee (A/9021 and Corr. I and 3, vol. III, sect. 26).

36. Mr. LIMPO SERRA (Portugal) said that Portugal was a country largely open to the sea, on which it had always depended, since it was a country of navigators and fishermen.

37. The law of the sea which had governed maritime relations over past centuries had been based on a certain balance of interests and that balance had permitted a long period of stability. It had been upset, on the one hand, because of the discovery of vast riches in the sea-bed and the possibility of their exploitation and, on the other, because the theory that the resources of the sea were inexhaustible had been discredited as a result of the depletion of several species of fish by modern fishing fleets. That depletion had aroused alarm among States dependent on fishing for their development and their very existence. The first reason had given rise to the concept of the continental shelf and the second had generated the idea of the economic zone.

38. Those two ideas were an expression of the same principle, namely, that man was indisputably linked to the sea which was situated adjacent to his land and over which he had rights. That principle had been stated more clearly in the Santiago Declaration of 1952, but it had already been inherent in the Truman Proclamation.

39. The right of States over the continental shelf was no longer in doubt. Apart from the paramount right of countries to the natural resources of the maritime zone adjacent to their coasts, their right to the continental shelf was based on and

justified by reasons of geological continuity. Indeed, the continental shelf was, from a geological point of view, the prolongation of the coast.

40. His delegation believed that the sovereign rights of exploitation established by the 1958 Geneva Convention justified granting the coastal States the exclusive right of exploration of the continental shelf and of establishing rules for the protection and conservation of its resources. As the Geneva Convention had established, the rights of the coastal State over the continental shelf should not prejudice the legal régime of the superjacent waters, taking into account, nevertheless, the unitary nature of the economic zone.

41. The main problem with respect to the continental shelf was that of fixing its outer limit. In view of the natural circumstances on which that concept was based, his delegation be-

lieved that the outer limit of the shelf should be fixed at the lower edge of the continental margin contiguous to the abyssal plain. However, his delegation would not encourage the adoption of geological or morphological criteria; their inaccuracy made it necessary to replace them by numerical equivalents for practical purposes. His delegation therefore believed that the lower edge of the continental margin should be identified at the 4,000-metre isobath. Due regard should, however, be given to the fact that the unitary nature of the economic zone could extend the rights of the coastal State beyond that limit.

42. The ideas just expressed by his delegation were neither exhaustive nor final and it wished to reserve its position on the matter.

The meeting rose at 12.50 p.m.

17th meeting

Friday, 26 July 1974, at 3.25 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Continental shelf (*continued*)

[*Agenda item 5*]

1. Mr. MUKUNA KABONGO (Zaire) said that, over the years, the concept of the continental shelf had lost none of its economic importance. Consequently, it was only right to incorporate it in the new convention. Under the 1958 Geneva Convention on the Continental Shelf,¹ the concept was based on the criteria of morphology and depth. At the current stage, however, it was appropriate to review those criteria within the context of an over-all political solution. A 200-mile economic zone, if established, would, in practice, not differ in substance from the concept of the continental shelf. The rights of a coastal State over the exploration and exploitation of the resources within the relevant economic zone would necessarily cover the mineral resources of the continental shelf, which henceforth should be delimited in accordance with the criterion of distance and not that of exploitability. The continental margin beyond the 200-mile limit would fall within the jurisdiction of the proposed international authority, which would have more extensive powers over that area.

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

2. Mr. ROTKIRCH (Finland) said that the question of the future régime of the continental shelf was closely linked to the various new proposals to extend the jurisdiction of coastal States over the natural resources adjacent to their coast, and particularly to the principle of an economic zone. The concept of the continental shelf embodied in the 1958 Geneva Convention on the Continental Shelf was widely accepted and applied by States, including States not parties to the Convention. Accordingly, the function of the Conference was not to abolish the concept, but rather to seek agreement on an exact definition of the outer limit of the continental shelf.

3. The part of the continental shelf situated within the proposed 200-mile economic zone would in practice be absorbed into that zone and would no longer exist as a special régime. The proposals to extend the maximum breadth of the territorial sea to 200 miles would have the same effect. There might be States, however, especially coastal States in enclosed or semi-enclosed sea areas, which did not wish to establish economic zones as such over the whole area of their continental shelf, or States which wished to establish zones of a limited economic

nature only, such as fishery zones, of which there were already many examples. In such cases, his delegation understood that the current concept of the continental shelf would remain valid. That view was also reflected in some of the proposals submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. If the concept were not to remain valid, difficult situations could arise in many areas of the world where the continental shelves of bordering States had been delimited through bilateral or multilateral agreements.

4. What should be avoided was the creation of a situation in which current agreements would have to be renegotiated just because the concept of the continental shelf had ceased to exist within the area over which an economic zone was established.

5. Mr. HARRY (Australia) said that the drafting of articles on the continental shelf was clearly one of the more important tasks confronting the Conference. The working paper submitted jointly by the delegations of Australia and Norway (A/9021 and Corr.1 and 3, vol. III, sect. 25) containing certain basic principles on an economic zone, including the continental shelf, and on delimitation, continued to constitute the formal position of his delegation, and that position should therefore be reflected in the statement of views to be prepared at the end of the discussion on the continental shelf.

6. He paid tribute to the President of Mexico who, in his address in the 45th plenary meeting, had set the tone for the discussion in the Committee by stating that rights exercised over the continental shelf, in accordance with the law in force, must not be adversely affected by any new provisions that might be adopted by the Conference; and that, in the view of Mexico, the coastal State should exercise sovereign rights over the continental shelf up to the external limit of the continental margin, or up to a distance of 200 miles from the coast. Australia held an almost identical position, the only difference being that it had not declared its sovereignty over the continental shelf, but exercised sovereign rights over the shelf for the purpose of exploration and exploitation of its natural resources.

7. The concept of the continental shelf had been widely supported in the Conference and the Committee must now define it clearly. The continental shelf could be defined, as the representative of Bangladesh had suggested at the previous meeting,

¹ United Nations, *Treaty Series*, vol. 499, p. 312.

in terms of the outer edge of the continental margin; that would be a completely clear definition. Other delegations, endorsing the view of the International Court of Justice in its 1969 North Sea judgment,² considered that it would be sufficient to refer to the natural prolongation of the land territory of the coastal State.

8. The definition set forth in the 1958 Geneva Convention must be clarified in two respects. Firstly, there must be a precise outer limit, since no State was proposing that the coastal State should have rights to the centre of the abyssal plains—in other words, all States agreed that there was a common heritage beyond the limits of national jurisdiction. Secondly, it must be made clear that the sovereign rights of the coastal State over the natural resources of the sea-bed and subsoil extended throughout the natural prolongation of its submerged land mass.

9. In the view of Australia, the doctrine of the continental shelf had never been that the continent as a whole, as distinct from separate coastal States of the continent, had rights over the continental shelf, and he felt confident that the Conference would not wish to embody that concept in the new convention. At the same time, Australia sympathized with the problems of the land-locked States, and was willing to assist in the solution of their problems.

10. Even if there was to be an economic zone, it was essential, for a number of reasons, to retain the concept of the continental shelf. First, it was necessary to respect existing sovereign rights of coastal States over the resources of the natural prolongation of their land territories, as in the case of the resources of their territories above sea level.

11. Secondly, the submerged land mass of certain States extended beyond 200 miles. In the case of some countries, including Australia, the extension was only a small area, in relation to the proposed economic zone. In other cases it was somewhat larger; in any event, however, there was no reason of equity why a coastal State should be deprived of an area over which it had existing rights, while the area under the jurisdiction of other States was being maintained or even extended.

12. Thirdly, the convention should define not only the area of the continental shelf but also the rights and duties pertaining to it. They were already well established, having been embodied in the 1958 Geneva Convention, and there was a large body of State practice with regard to rights for the exploration and exploitation of the natural resources of the continental shelf.

13. The unity of the continental shelf should be preserved, and should be reflected in the relevant draft articles. The rights and duties of the coastal State in relation to the superjacent waters would be dealt with in connexion with the proposed 200-mile economic zone; beyond 200 miles, the superjacent waters would, of course, be part of the high seas.

14. Any diminution of the rights of the coastal State over the continental shelf would be inequitable to the significant number of States that possessed those rights and already exercised them. However, a diminution of those rights would also be inequitable to the many States which for various reasons had not yet been able to exercise those rights but which, in maturing awareness of the potential of their continental shelf, might see in such exercise the solution of many serious problems of development. It would be for those States to decide how they developed their continental shelves, whether individually, or in association with other States or even with the proposed International Sea-Bed Authority.

15. What he had said in regard to the preservation of the inherent rights of the coastal State over its submerged resources would also apply in the drafting of articles relating to delimitation. At the current stage, he noted that it would be wrong to delimit the sea-bed between adjacent and opposite

States in such a manner as to deprive States of rights which they, under bilateral agreements or otherwise, already exercised in good faith.

16. In proposing that the new convention should respect existing rights, Australia was sympathetic to the position that, notwithstanding variations of geography, national jurisdiction over the coastal sea-bed area should be exercisable by all States to a reasonable limit based on distance. There should be no major difficulty in combining the two kinds of limit.

17. The results of a detailed survey of the outer areas of the Australian continental margin, which was now complete, indicated that it was entirely feasible to plot the outer edge of that margin. There was no reason to suppose that there would be any greater difficulty in demarcating the margin of other States, although such mapping activity would of course be necessary on a fairly wide scale in order to demarcate clearly the limits of national jurisdiction of States throughout the world. Australia's experience might prove of interest and use to other members of the Conference at the relevant stage in its work.

18. Mr. OGISO (Japan) said he wished to concentrate on the two most important aspects of the item, namely, a precise definition of the outer limits of the continental shelf, and the question of delimiting the boundaries of the continental shelves between adjacent and opposite States.

19. In its statement in the general debate at the 41st plenary meeting, his delegation had drawn a distinction between the legal régime to be applied to the non-living resources of the sea-bed and the subsoil and that to be applied to the living resources.

20. In view of the well-known criticism of the definition of the continental shelf—or the “coastal sea-bed area”, as it should be called—in the 1958 Geneva Convention on the Continental Shelf, a more precise definition was called for. Of the various criteria proposed for that purpose, his delegation took the view that the criterion of distance seemed to be preferable, primarily because it was simple to apply. Given the complex nature of the geology and topography of the sea-bed areas of the world, any other criterion might create serious difficulties. In view of the important bearing that the question of limits had on the work of the other Committees, particularly the First Committee, and in order to avoid the possibility of perennial disputes between the proposed International Sea-Bed Authority and the coastal States arising from a vague definition, it was imperative to adopt one that was simple and clear.

21. More importantly, the criterion of distance would ensure a more equitable solution than would other criteria based on depth, geomorphology or topography, as certain delegations had already pointed out. In the interests of the international community as a whole, it would be wrong to perpetuate the inequity of nature that would entitle some States to coastal sea-bed areas extending only a few miles from the coast while entitling others to such areas extending for several hundred miles.

22. In addition, the extent of the coastal sea-bed area was related to the concept of the common heritage of mankind. The greater the sea-bed area falling under national jurisdiction, the smaller would be the area to be administered internationally for the benefit, in particular, of the developing countries. If a substantial part of the resources of that area were to be made available to the international community, there must clearly be a limit to what the coastal State could claim over the adjacent sea-bed area.

23. His delegation therefore believed that the limits of the continental shelf or the coastal sea-bed area in which the coastal State exercised sovereign rights for the purpose of exploration and exploitation of non-living resources should be clearly defined in accordance with the criterion of distance. The

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

coastal State should be able to choose that distance freely within a limit not exceeding 200 nautical miles.

24. He opposed the proposal that coastal States could claim sovereign rights over resources beyond 200 nautical miles up to the end of the whole continental margin, because that would reserve a disproportionate amount of the resources for the coastal States and reduce the revenue of the International Sea-Bed Authority to the detriment of the developing countries.

25. With respect to the question of delimiting the boundaries of the continental shelf or the coastal sea-bed area between adjacent and opposite States, his delegation believed that the principle of equidistance should be generally adopted, except in certain special circumstances, as it had been for defining the outer limits of the coastal sea-bed area. That viewpoint was amply justified by precedent. Moreover, islands and islets, regardless of their size and location, should in principle be entitled to the coastal sea-bed area on the same footing as the continental part of the territory.

26. His delegation believed that the coastal State should have the right to establish beyond its territorial sea—which in its view should be established at 12 nautical miles—a coastal sea-bed area up to a maximum distance of 200 nautical miles, in which it exercised sovereign rights for the purpose of exploring and exploiting non-living resources. The boundary between adjacent or opposite States should be determined by agreement in accordance with the principle of equidistance. That, however, should not prejudice the agreements already in force between the coastal States concerned relating to the delimitation of their respective coastal sea-bed areas.

27. Mr. ROE (Republic of Korea) said that his country firmly believed in the *ipso facto* and *ab initio* rights of coastal States over the submerged natural prolongation of their land territory known as the continental shelf. His delegation agreed with what the President of Mexico had said at the 45th plenary meeting, namely that any infringement of the sovereign rights that a country had been legitimately exercising over the resources of its adjacent continental shelf was unacceptable.

28. With respect to the outer limit of the continental shelf, his delegation recognized the need to revise the exploitability criterion incorporated in the 1958 Geneva Convention on the Continental Shelf. It believed that the 200-mile distance criterion should apply in the first place and, when the natural prolongation of the continental shelf extended beyond 200 miles, the continental margin should be the limit of national jurisdiction.

29. In enclosed and semi-enclosed areas, such as the one surrounding the Korean peninsula, the claims of adjacent and opposite States were bound to overlap. In such cases, delimitation of the boundary would give rise to many problems. His delegation shared the view that differences should be settled by agreement between the parties concerned. In the absence of any specific agreement or of any special circumstances, the principle of the median line of equidistance should apply.

30. If the parties concerned could not arrive at a mutually satisfactory agreement, or if one party had difficulty in accepting the claim of the other in the area where jurisdiction or claims overlapped, joint development schemes should be taken into consideration, as had been suggested by the International Court of Justice in its 1969 decision on the North Sea continental shelf case.

31. Mr. LACLETA Y MUÑOZ (Spain) said that, with respect to the relationship between the continental shelf and the economic zone, three major trends were evident. The first, represented by the Nigerian draft articles (A/CONF.62/C.2/L.21), and reflected in the Declaration of the Organization of African Unity on the issues of the law of the sea (A/CONF.62/33), was to set up a single régime for the resources of the area. In that case, the idea of the continental shelf would lose its *raison d'être* and become absorbed into the

wider concept of economic zone. Nevertheless, the formula left open the question of an acceptable solution for States with shelves extending beyond 200 miles.

32. The second trend, represented by the Nicaraguan draft articles (A/CONF.62/C.2/L.17) and the proposal submitted to the sea-bed Committee by Colombia, Mexico and Venezuela (A/9021 and Corr.1 and 3, vol. III, sect. 9) was to come to grips with the problem and to maintain that the economic or national zone was complemented by the traditional idea of continental shelf. Within the national zone, there would be a single régime for both renewable and non-renewable resources. The continental shelf would no longer be operative within the economic zone, and outside that zone it would come within a residual category. Such a solution would cover the rights of States with an extensive shelf.

33. The third trend, which had been clearly explained by the Argentine delegation in the sea-bed Committee, was the view that the economic zone and the continental shelf were complementary, not mutually exclusive. The economic zone would be governed by the régime applicable to the water column and living resources, while the rights of the coastal States over the resources of the sea-bed and the ocean floor would be subject to a different régime, that of the continental shelf.

34. The last two proposals would both involve maintenance of the rights already acquired by countries with a geomorphic shelf extending beyond 200 miles.

35. His delegation believed that two essential criteria had to be taken into account in an equitable solution of the problem. The first criterion was the 200-mile limit, as put forward by his delegation in document A/CONF.62/C.2/L.6. But that alone would not adequately protect the legitimate interests of coastal States with a continental shelf extending beyond 200 miles. His delegation therefore considered that the lower outer edge of the continental rise should be taken into account as well.

36. The solution to the problem must not be found at the expense of the interests of any group of States. If it were, those States might well refuse to accept the new law of the sea.

37. Mr. FATTAL (Lebanon) recalled a statement that he had made at the First United Nations Conference on the Law of the Sea in 1958, to the effect that if the criterion of exploitability were accepted it might mean that four fifths of the high seas would eventually become the exclusive preserve of technically advanced coastal States, instead of being open to the whole international community as *res communis*. At the time, he had doubtless been considered either as backward or as a visionary. Today if the idea of the economic zone were adopted, the concept of the continental shelf would become meaningless, except beyond the 200-mile limit—in which only three or four privileged States could exercise sovereign rights—either because the 200-metre isobath criterion or the exploitability criterion, or both, were maintained. However, the exploitability criterion conflicted with the rights to be granted to the proposed International Sea-Bed Authority. Technically advanced States would be able to exploit areas at a depth which ought normally to be exploited by that Authority, and would thus be competing with it. It was absolutely essential to abolish the criterion of exploitability so as to leave at least part of the sea-bed to the International Authority.

38. The criterion of the 200-metre isobath might eventually be kept. If, however, it were to be extended to the 4,000-metre isobath, as certain favoured States seemed to wish, there would remain nothing for the International Sea-Bed Authority to exploit except abyssal depths. There would then be little point in establishing an Authority. The sea-bed prizes would go to technologically or geographically favoured nations.

39. If the ideas of exploitability and depth were eliminated, there remained only the criterion of distance, which led back to the idea of the economic zone. The concept of the continental shelf should be replaced by that of the economic zone. To

retain the shelf concept would be unfair and undemocratic. It might well be argued that those were acquired rights: but such rights had impeded the progressive development of interna-

tional law. If a mistake had been made in 1958, there was no need to perpetuate it.

The meeting rose at 4.20 p.m.

18th meeting

Monday, 29 July, 1974 at 3.25 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Continental shelf (continued)

[Agenda item 5]

1. The CHAIRMAN said that as document A/CONF.62/L.4 had been submitted to the plenary, it was automatically referred to the Committee for consideration and delegations could refer to it in their statements.
2. Mr. ANDERSEN (Iceland), speaking on a point of order, said that as one of the sponsors of document A/CONF.62/L.4, he had agreed not to address the plenary on the express understanding that he would be permitted to make a short statement at the current meeting.
3. Mr. UPADHYAYA (Nepal), intervening on a point of order, considered that delegations already included in the list of speakers should make their statements first and other delegations could then have the floor.
4. The CHAIRMAN appealed to the representative of Iceland to await his turn on the list of speakers in order to avoid a lengthy procedural discussion.
5. Mr. ANDERSEN (Iceland) agreed to comply with the Chairman's request in order to facilitate the work of the Committee.
6. Mr. GALINDO POHL (El Salvador) considered that the two crucial issues before the Conference were the status of the continental shelf beyond the 200-mile limit and the rules for the delimitation of the national shelf.
7. Some States were of the opinion that consideration of the problems relating to the continental shelf could be based on the 1958 Geneva Convention on the Continental Shelf,¹ to which they were parties, while other States not parties to that Convention felt that the discussion should proceed on the basis of customary international law, jurisprudence and other internationally accepted rules.
8. The customary law which had developed over the past 30 years was largely in conformity with the rules in the 1958 Convention, but if those rules were to be regarded as customary law, binding on all States, merely because of the passage of time, the effect would be to elevate a few States, usually highly developed States, to the status of international lawmakers. Consequently, the 1958 Convention should merely be regarded as a useful instrument of comparison in the present discussion.
9. In his delegation's view, the definition of the continental shelf in the 1958 Geneva Convention, to which his country was not a party, was imprecise and unclear. It was open to different interpretations, ignored both the geographical criterion and the geomorphological criterion for defining the continental shelf and thus lacked the elements which might have given a different meaning to the criterion of exploitability so that it could not be interpreted, as it had been, to mean that the oceans of the world could become national lakes divided by the coastal States among themselves. It was therefore necessary to find other sources of international law to supplement that Convention. The International Court of Justice had made a valu-

able contribution in paragraph 19 of its judgment on the North Sea continental shelf,² regarding the basis of the rights of the coastal State over the adjacent continental shelf in stating that the continental shelf was a natural prolongation of the land territory and constituted the submerged part of the latter and as such belonged *ipso facto* and *ab initio* to the coastal State.

10. The geographical criterion was not appropriate for identifying the submerged part of the territory of a coastal State or continental shelf because there were too many exceptions. The geomorphological criterion was more reliable since it was based on the type of rocks which constituted the shelf. The limit of the continental shelf over which the coastal State exerted rights should therefore be set at the outer edge of the continental rise where continental rocks were still found. When the continental shelf so defined ended within the 200-mile zone, the rights of the coastal State in its economic zone would extend to the subjacent sea-bed; when it extended beyond the 200-mile zone, the coastal State would retain its rights, over the continental shelf only, unless it freely decided to waive them. There was no reason why that natural prolongation of its territory should end at any fixed distance regardless of the nature of the sea-bed.

11. In the natural continental shelf, defined in the geomorphological sense, between the end of its 200-mile economic zone and the outer edge of the continental rise, the coastal State should have rights of the same legal nature as in the economic zone, and when the régimes were divided by horizontal layers of land and water, the same rights as in the sea-bed of the economic zone.

12. The theory of the coastal State's jurisdiction over its continental shelf had been generally accepted for many years before the principle that the sea-bed and the subsoil thereof beyond the limits of national jurisdiction were part of the common heritage of mankind had become part of international legal and political thinking. Indeed, if there had been any encroachment on that principle, it had been the effect of the 1958 Convention on the Continental Shelf. It would be helpful to the Conference to accept the facts about the continental shelf and to recognize the coastal State's rights thereto irrespective of the 200-mile distance criterion.

13. As the entire continental shelf of El Salvador lay within the 200-mile limit, his country was not merely protecting its self-interest. It considered that the Conference should accept the political and legal realities of the continental shelf in order to reconcile conflicting interests.

14. The Conference should also consider rules for the delimitation of the national shelf. The 1969 judgment of the International Court of Justice on the North Sea Continental Shelf cases had been exploited excessively. A distinction should be drawn in that judgment between that which constituted a dictum of general application and that which applied solely to the particular circumstances of the case *sub judice*. His delegation favoured provisions similar to those contained in article 6

¹ United Nations, *Treaty Series*, vol. 499, p. 312.

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

of the 1958 Geneva Convention on the Continental Shelf on the understanding that the principle of equidistance, with exceptions in special circumstances, would not merely serve as a method of delimitation but would become a rule of delimitation.

15. In conclusion, he stated that a logical and realistic solution of the two crucial issues he had discussed would open the way to agreement on other matters.

16. Mrs. KELLY DE GUIBOURG (Argentina) shared the view expressed by various delegations that the success of the Conference would depend to a large extent on the solution of three major issues: the territorial sea, the 200-mile zone, and the continental shelf. Various proposals on those items were before the Conference, including the draft articles submitted by her delegation (A/9021 and Corr.1 and 3, vol. III, sect. 26) to the spring session of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction.

17. Argentina had always maintained that the three questions were interdependent. While confining its remarks at the present time to the continental shelf, her delegation reserved the right to intervene on other issues, including document A/CONF. 62/L.4, which would form part of the political agreement to be reached by the Conference.

18. International law recognized that the sovereignty of coastal States extended beyond the territorial sea to the continental shelf, and proposals should be drafted on the basis of that concept. She defined the continental shelf as a submarine zone adjacent to the territorial sea which constituted a natural prolongation of the territory of a coastal State, a broader concept than the geomorphological or bathymetrical concept of the continental shelf. The second element of the definition was that the sovereignty of the coastal State extended as far as it was possible to exploit the resources of the sea-bed and ocean floor and the subsoil thereof, the so-called exploitability criterion. Finally, the term implied that the rights of the coastal State over the continental shelf were "exclusive" and did not depend on occupation, effective or notional, or on any declaration. In that connexion, she reiterated the views expressed by the head of her delegation in the plenary, and noted that Argentina had expressed its desire to incorporate the area of its continental shelf in legislation enacted even before the Truman Proclamation of 1945.

19. The International Court of Justice in its judgment on the North Sea Continental Shelf cases had ruled that a distinction should be made in the Geneva Convention between the rules of customary international law and those which resulted from the effects of that Convention.

20. Argentina was not a party to any of the four Geneva Conventions nor was it a litigant in the International Court of Justice cases. Nevertheless, those instruments proved the prior existence of customary rules which constituted the legal basis for her country's position.

21. It was necessary to formulate rules which would clearly establish the extent of the rights of a coastal State over its shelf. It was the view of her delegation that such rights were not limited to the exploration and exploitation of natural resources, but extended to other aspects such as scientific research and the control of pollution which might result from activities carried out therein. With regard to the definition of the outer limit of the continental shelf, the concept of the natural prolongation of the territory of the coastal State should allow for the extension of the sovereignty of such States at least as far as the lower outer edge of the continental margin adjoining the abyssal plains. The representative of Portugal had stated that the concept of the continental margin was difficult to define and had therefore proposed that it be replaced by the 4,000-metre bathymetric concept. She endorsed the view expressed by the representative of Australia that the continental

margin was easily determinable. Furthermore, Argentina had already defined the outer edge of the continental margin relating to its continental shelf and its location had been drawn in the relevant charts.

22. Her delegation maintained that that criterion for the establishment of the outer edge of the continental shelf was the only one which was in harmony with the concept of the natural prolongation of the territory of the coastal State. The bathymetric criterion would not cover the entire submerged territory.

23. The criterion of exploitability should be replaced by a more precisely defined limit. However, in view of the major interests involved, the Conference should include the criterion of exploitability in the concept of a 200-mile limit. Since the entire sea-bed and subsoil were now exploitable, it was necessary to define a clear boundary which would separate the territorial domain of the coastal State from the international seabed zone. However, in the view of her delegation, use of a distance criterion to make the concept of exploitability more specific could not and should not replace the geological definition deriving from the concept of the natural prolongation of territory, which was the basic concept of the continental shelf. The exploitability criterion complemented the geological criterion, although both had the same legal value.

24. Argentina did not agree with those who advocated the establishment of a distance criterion alone for fixing the outer limit of the continental shelf.

25. The distance criterion, i.e. the 200-mile zone, was complementary to the geological criterion, although it had the same value. Moreover, in order to establish an appropriate relationship between the adjacent 200-mile zone and the continental shelf, the distance criterion for the outer limit of the shelf should be set up not only as an alternative but also as a joint criterion to cover those cases in which the outer limit of the continental shelf was less than 200 miles from the coast.

26. As had been stated in the discussion by other delegations, any future convention should not depart from the customary international rules in force, which embodied solutions with the same weight as those establishing the territorial borders of States. Her delegation could not accept the contention that the continental shelf did not belong exclusively to the coastal States but to the continent. In that connexion, she referred to the International Court of Justice pronouncement, on the North Sea continental shelf, that land-locked countries could be set aside in the consideration of the effects of the Geneva Convention on the Continental Shelf and its statement in paragraph 43 of that judgment that "what confers the *ipso jure* title which international law attributes to the coastal State in respect of its continental shelf is the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal State already has dominion—in the sense that, although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea". The possibility of continentalizing any part of the territory of a State on the basis that some countries could make good use of the natural resources therein was unacceptable. Other ways should be sought to correct international injustice.

27. The territorial integrity of States, which was one of the basic principles of international law, could not be altered with impunity. Her delegation was not prepared to negotiate on its territorial integrity, and its continental shelf was part of its territory. Because of its relevance to the complex question under discussion, she wished to state that the Malvinas Islands, which were still under foreign domination, were located on the Argentinian continental shelf. That was not the least important foundation for her country's continually stated claim for the restitution of those Islands which legally, historically and geographically were part of its territory.

28. The Declarations of Montevideo and Lima, of 1970, the Declaration of Santo Domingo of 1972, and the Inter-American Juridical Committee of the Organization of American States, as well as the Political Declaration of the Fourth Conference of Heads of State or Government of Non-Aligned Countries held at Algiers in 1973, had clearly referred to a régime for the continental shelf beyond the 200-mile limit, as had various proposals to the sea-bed Committee and the Conference. Argentina expressed its solidarity with the other developing countries. It would fight alongside the countries of the third world for the establishment of a more equitable and balanced international law of the sea. However, it could not accept any questioning of its title to its entire continental shelf.

29. Mr. CHAO (Singapore) said that the 1958 Geneva Convention on the Continental Shelf was unjust in that it sought to confer upon a small minority of privileged coastal States which accidentally bordered broad continental shelves the sovereign right to exploit the natural resources thereof. It had been argued that the right of coastal States in respect of the continental shelf up to the edge of the continental margin was an acquired right under the Convention which the Conference should not disturb. That argument was open to question for several reasons. First, the Convention referred to "continental shelf" and not to "continental slope", "continental rise" or "continental margin". Secondly, the argument ignored the fundamental limitation of adjacency which was laid down in article 1 of the Convention; he observed in that connexion that according to the judgment of the International Court of Justice in the North Sea Continental Shelf cases the continental shelf hundreds of miles off the coast could not conceivably be regarded as adjacent to the coast. Thirdly, if it was asserted that the continental margin was the natural prolongation of the continental land mass—a view which appeared to be supported by the International Court of Justice—it followed that all States on the continent, and not just the coastal States, should be entitled to the natural resources of the entire continental margin. Fourthly, at the time of the adoption of the 1958 Convention it had not yet been contemplated that it would be possible to exploit sea-bed resources beyond the 200-metre isobath.

30. In any case, the Conference had been convened not to protect acquired rights but to review the entire law of the sea and introduce an element of justice wherever required. The most important task before the Conference was to determine how the resources of the sea as a whole could be equitably shared among all nations and peoples and that task could not be accomplished unless the question was viewed in its totality. The history of the development of the concept of the continental shelf showed that it had been evolved to serve the interests of a few advanced developed countries. The Conference should have the courage to rectify such injustices.

31. Every State, whether coastal or land-locked, should be entitled to a fair share of the resources of the sea in accordance with the principle of the common heritage of mankind. If that principle was to have any meaning, as great an area as possible of the continental margin and the sea-bed should be reserved for the international régime. Even the establishment of the economic zone would be a crippling blow to the international régime, as could be seen from the report of the Secretary-General of the United Nations entitled "Economic significance, in terms of sea-bed mineral resources, of the various limits proposed for national jurisdiction".³ If the coastal States were granted the right to the continental margin beyond the economic zone, leaving the international régime with merely the abyssal plains and other parts of the deep ocean basins, the concept of the common heritage of mankind would be as good as buried. According to the Secretary-General's report, if the Conference adopted a combination of both the 200-mile limit

and the 3,000-metre isobath, it was highly doubtful that there would be any hydrocarbons left as part of the common heritage of mankind. As to the question of exploiting manganese nodules on the deep sea-bed, it was generally recognized that their economic exploitability was still doubtful—as could be seen from table 3 of that report. Furthermore, the representative of the United Nations Conference on Trade and Development (UNCTAD), in his statement in the 6th meeting of the First Committee, a summary of which was reproduced in document A/CONF.62/C.1/L.2, had expressed the view that the future International Sea-Bed Authority could not earn enough revenue to compensate land-based producers of developing countries for the losses they would sustain when sea-bed mining was undertaken, and that the only way it could expect to produce a surplus for distribution to developing countries was by a preventive approach that would fix prices for the minerals involved by agreement between producers and consumers. Thus, there was considerable uncertainty as to the commercial exploitation of the manganese nodules. In fact, because of the possible economic effect that deep-sea mining could have on land-based producers, it might not be undertaken for a long time.

32. Accordingly, to allow coastal States further rights beyond the economic zone was to negate the principle of the common heritage of mankind; it would perpetuate injustice, and would largely benefit developed countries. The Conference must ensure that the zone under the jurisdiction of the proposed International Sea-Bed Authority would be economically viable. Consequently, in order to give real effect to the principle of the common heritage of mankind, the Conference should abandon the independent concept of the continental shelf. The interests of mankind as a whole would not be served by any extension of coastal State jurisdiction beyond the proposed economic zone.

33. Mr. OCHAN (Uganda) emphasized that the world situation had changed considerably since 1958. With reference to the specific case of the continental shelf, he said that Uganda was not a party to the 1958 Geneva Convention and, like a majority of States participating in the Conference, did not agree with its provisions, which took no account of the interests of land-locked and geographically disadvantaged States.

34. There were additional convincing reasons why the concept of the continental shelf should be revised. Under the more practical concept of a 200-mile economic zone—which would replace that of the continental shelf—States with a continental shelf of less than 200 miles would enjoy an extension of their jurisdiction. In the case of States whose continental shelf extended beyond 200 miles, a system of equitable compensation should be devised. Furthermore, the exploitability criterion embodied in the 1958 Geneva Convention benefited only States with a high level of technological advancement.

35. Mr. UPADHYAYA (Nepal) said that the 1958 Geneva Convention on the Continental Shelf was a striking example of the furtherance of the interests of a few States at the expense of the majority, particularly, developing land-locked States.

36. His delegation took the concept of the continental shelf to mean the natural prolongation under water of the land mass of a continent and not merely that of a coastal State. A concept which placed the shelf under the sole jurisdiction of a coastal State might become the source of conflict and, in addition, would render meaningless the concept of the common heritage of mankind.

37. Certain delegations had claimed that the régime of the continental shelf formed part of customary international law, and that rights had already been acquired by them under the existing Convention. That theory had serious drawbacks. States not parties to the 1958 Convention were not bound by its provisions. On the other hand, coastal States parties to the Convention had claimed sovereign rights over the continental shelf unilaterally. Such unilateral acts, no matter how many of them there might be, could not create customary law, and the

³ Document A/AC.138/87 and Corr.1 of 4 June 1973.

absence of protest by the States not parties to the Convention was no proof of acceptance. Moreover, in the case of coastal States which lacked the technological know-how to exploit the natural resources of the continental shelf, the application of the concept of acquired rights was illogical.

38. The doctrine of the continental shelf constituted a challenge to the principle of the high seas, which prohibited individual States from claiming any part thereof, including the sea-bed and its subsoil.

39. In the light of those serious drawbacks, the concept of the continental shelf could either be abandoned altogether in favour of a new concept, such as that of the economic zone, or, if retained at all, it must signify that the continental shelf lay within the common jurisdiction of all the States of the continent in question. In his delegation's view, the concept should be completely revised. Since one delegation had claimed that the concept had had the support of the Group of 77 at its Conference at Nairobi in March 1974, his delegation wished to point out that what that Conference had decided was that the matter deserved further consideration; any proposal on the subject submitted to that Conference accordingly remained an internal document of the Group of 77 and could not be considered to reflect the position of the participants.

40. Mr. CARPIO CASTILLO (Venezuela) said that his delegation's views regarding the continental shelf were set forth in the draft articles submitted by Colombia, Mexico and Venezuela (A/9021 and Corr.1 and 3, vol. III, sect 9).

41. As to the working paper in document A/CONF.62/L.4, his delegation agreed with the basic idea set forth in that text to the effect that the establishment of an exclusive economic zone did not preclude the concept of a continental shelf, which was embodied in conventional and customary international law. In his delegation's view, the retention of the concept of the continental shelf—which Venezuela and the United Kingdom had pioneered in their joint negotiations concerning the Gulf of Paria—was a fundamental element of the general political agreement sought at the Conference.

42. As a natural prolongation of the continental and island territory of the coastal State, the continental shelf was a geographical and geological reality that should be reflected in the new definition of the concept. As stated in article 13 of the proposal submitted by Colombia, Mexico and Venezuela, the continental shelf should extend to the outer limits of the continental rise. His delegation consequently considered that article 19, paragraph 2, of document A/CONF.62/L.4 did not truly reflect the concept of the continental shelf. It would be sufficient to state that the continental shelf was the natural prolongation of the continental and island territory of the coastal State, and to establish clearly that that prolongation might extend, in some cases, beyond 200 miles. Such a definition would avoid any confusion between the continental shelf, over which the State had sovereign rights under existing international law, and the sea-bed, subsoil and superjacent waters covered by the new concept of an exclusive economic zone in which the coastal State would exercise sovereignty only over resources. In other words, the two areas would be subject to separate legal régimes.

43. His delegation was now convinced that, in order to avoid any misinterpretation, it would be better to return to the original concept of the continental shelf and apply a single legal régime covering both the part of it which lay within the exclusive economic zone and the part beyond that zone. His delegation had advanced that idea in the sea-bed Committee and wished now to reiterate its preference for such a formula. That would entail a revision of the proposal by Colombia, Mexico and Venezuela, by the simple deletion of article 15; to that end, his delegation would discuss the matter with the other sponsors.

44. Mr. THEODOROPOULOS (Greece), introducing the draft articles on the continental shelf submitted by his delegation in document A/CONF.62/C.2/L.25, suggested that they should be read in conjunction with document A/CONF.62/C.2/L.22, which contained draft articles, also submitted by his delegation, on certain other aspects of the law of the sea.

45. In document A/CONF.62/C.2/L.25 his delegation was seeking to present in a systematic way, without affecting their substance, proposals which were already before the Committee.

46. His delegation was somewhat sceptical with regard to the argument that the new concept of the economic zone superseded that of the continental shelf and that, therefore, a new convention need not deal specifically with the latter. It certainly had no misgivings or reservations as to the concept of the economic zone; however, that was a new and still untried idea, while the concept of the continental shelf was recognized and accepted in international legal instruments and practice. Moreover, the juridical content of that concept was already defined in a generally accepted form and consisted in the exercise of sovereign rights of the coastal State for the purpose of exploring and exploiting the natural resources of the shelf. Since, therefore, the two concepts were not coextensive, either in the juridical or the geographical sense, his delegation wished to preserve the concept of the continental shelf in a manner which, as could be seen from article 4 of document A/CONF.62/C.2/L.25, would be without prejudice to any decision which the Conference might take with regard to the economic zone.

47. Since it was important to avoid uncertainty in the drafting of the convention, his delegation subscribed to the general tendency to abandon the criterion of exploitability in favour of the more precise and more objective numerical criteria of depth and breadth. That view was reflected in the formulation of article 1 of his delegation's proposal. The actual isobath to be referred to in that article would be a matter for negotiation only if and when it appeared generally acceptable to base the definition of the continental shelf on the proposed combination of criteria.

48. Article 2, relating to islands, faithfully reflected existing international law.

49. In article 5, provision was made for preserving the rights already acquired and exercised by States, in order to avoid disputes arising from the implementation of the new law.

50. In article 6, relating to delimitation between States, preference was given to bilateral agreement and, failing such agreement, recourse would be had to the median line of equidistance, a principle embodied not only in multilateral international instruments but also followed very widely in bilateral agreements all over the world. While parties would be free to seek agreement among themselves through any other peaceful procedure—and provided any of the parties was not negotiating under duress—the criterion of the median line of equidistance would be used as a last resort.

51. As to those proposals already submitted to the sea-bed Committee that were based on a different approach, his delegation considered that it was far from satisfactory to try to base agreements between the parties on words such as "equitable principles": that was exactly the type of dangerously vague wording which should be avoided in any new convention. Moreover, such an approach was made even more nebulous by the open-ended enumeration of so-called "relevant factors", especially when they were spelt out under the equally vague label of "*inter alia*", without any mention of the one rule—as the representative of El Salvador had pointed out—most widely used in international practice, namely that of the median line. In that context, he wished to recall the statement made by the President of the Conference at the 46th plenary meeting to the effect that the rational and practical approach

would be to devise a rule which would be basic to all situations while allowing for regional arrangements to suit special situations and circumstances. That should be kept in mind as a general guideline in order to avoid opening the door to conflicting interpretations. He had in mind in particular such odd ideas as that of islands existing on the continental shelf of another State, as if they had been placed there *a posteriori* as an afterthought of the Creator. If that argument were pursued, the conclusion would be reached that the islands themselves might one day be claimed by the continental State as part and parcel of its own territory. States possessing islands should be warned of the implications of such an approach.

52. His delegation did not claim originality with regard to document A/CONF.62/C.2/L.25; it had merely sought, as a basis for further deliberation, to reflect the wording of proposals submitted to the sea-bed Committee as well as a number of views expressed in the Second Committee by other delegations, particularly that of Japan.

53. Mr. LUPINACCI (Uruguay) said that the legal concept of a continental shelf was based on a fact of nature on the basis of which the law recognized certain situations, relations and interests that should be regulated and protected.

54. It was a real fact of nature that the territory of the State extended geologically under the sea adjacent to its coast to the point where it met the ocean floor. The basic legal consequence of that fact was that the State should extend the sovereign rights that it exercised over its territory to the natural prolongation of the latter, which had a patent, intrinsic relationship with that territory in accordance with the criterion of continuity.

55. However, that same fact of nature, and the incidence of other factors deriving from the rights of third States of the international community with regard to the superjacent water column, required special treatment, namely, the application of a special legal régime. Thus, it was necessary, on the one hand, to protect the rights of the coastal State and, on the other, to safeguard the legitimate interests of third States and the international community, on the basis of a simple, legally precise and equitable formula.

56. There was accordingly a need to formulate a concept of the continental shelf on the basis of geological and allied criteria with a view, on the one hand, to remedying the political, economic and social injustices suffered by various States as a result of the great variation in the width of continental shelves and, on the other hand, to avoiding the unnecessary and confusing duplication of legal régimes and harmonizing the various interests at stake.

57. Uruguay, which had not ratified the 1958 Geneva Convention on the Continental Shelf but which had adopted the definition of the continental shelf contained therein in its domestic legislation, was ready to accept a new definition that would correct the defects inherent in the extremely imprecise definition used in the Convention and would be compatible with the concept of the international zone, considered as the common heritage of mankind—a concept that enjoyed the unanimous support of all States.

58. A new definition should, above all, respect the inalienable sovereign rights that the coastal State exercised over the whole area of the continental shelf, as the natural prolongation of its territory. That was established under international law, and had been confirmed by the International Court of Justice in its judgment on the North Sea Continental Shelf cases, which had been mentioned by so many delegations.

59. Nevertheless, the geological concept of the shelf should be modified in two respects in so far as the applicable legal concept was concerned.

60. First, the shelf should be considered as beginning from the external limit of the sea area over which the State exercised sovereignty. For Uruguay that area was the territorial sea,

which could extend to a maximum distance of 200 miles from the applicable baselines. Up to that limit, the same legal régimes applied to the water column, the sea-bed and the subsoil, and also to the corresponding air space, without prejudice to the plurality of régimes in the territorial sea, which were intended to meet other purposes. In consequence, up to that limit it was neither meaningful nor legally appropriate to separate the sea-bed and the subsoil from the water column, since they all constituted part of the territorial sea.

61. Secondly, as the prolongation of the submerged territory of the coastal State, the continental shelf consisted of the continental crust lying below sea level, in other words, the area up to the continental margin, including the continental slope and the continental margin. The sovereign rights of the coastal State should accordingly extend to the external limit of the said continental margin, where it bordered the ocean floor. Over that area, the coastal State possessed the inalienable rights inherent in its sovereignty.

62. Nevertheless, the legal concept of the continental shelf should also incorporate a distance criterion in order to take account of the situation of coastal States with little or no shelf or with a geologically narrow shelf less than 200 miles wide.

63. Thus, his delegation understood the continental shelf to mean the sea-bed and subsoil of the submarine areas adjacent to the territory of the coastal State, but beyond the external limit of its territorial sea, comprising the whole prolongation of the submerged territory of the State up to the lower external edge of the continental margin bordering on the ocean floor; or, when that edge was situated at a distance of less than 200 miles from the applicable baselines used for measuring the breadth of the territorial sea, then up to that distance, provided the territorial sea was less than 200 miles wide.

64. Accordingly, the coastal State exercised its sovereignty over the continental shelf for the purposes of exploring it and exploiting its natural resources, both renewable and non-renewable, and that did not affect the legal régime of the superjacent waters, or the air space above them. In the rules adopted by the coastal State for the conservation of the renewable resources of its continental shelf, and to avoid pollution of the shelf itself or of areas beyond it from the continental shelf, account should be taken of the recommendations of the international technical bodies made up of all States concerned. It was also for the coastal State to authorize scientific research on the continental shelf, bearing in mind the general interest in promoting and facilitating such activities, subject to its right to participate in all phases of the research and to have access to interpret and use the results obtained.

65. On the basis of the foregoing, it should be possible to draft an equitable formula that would overcome the defects of the definition embodied in the 1958 Geneva Convention.

66. Mr. CHEEMA (Pakistan) said that developments since the Geneva Convention of 1958, and in particular the general demand of the developing States for the extension of the territorial sea to 12 miles and the patrimonial sea to 200 miles, had made some of the provisions of that Convention irrelevant. In his delegation's view certain changes had become inevitable, although they would depend on the precise nature and scope of the rights of the coastal States in the economic zone.

67. First, the basis for the determination of the area of the continental shelf—the extent of exploitability—had been materially altered because of technological advances. Moreover, the depth of 200 metres no longer held good as a criterion.

68. Secondly, the rather artificial classification of living organisms into mobile, sedentary and immobile, as contemplated in article 2, paragraph 4, of the Geneva Convention, had lost its significance.

69. Thirdly, the limitation of the powers of the coastal States regarding the conduct of scientific research had also become untenable, because it was inconsistent with the extended scope

of national sovereignty and jurisdiction of the coastal States, which had been widely supported.

70. Lastly, the legal status of the superjacent waters as high seas might also be affected, depending upon the final shape of the economic zone.

71. His delegation believed that the proper approach would be to examine the nature and limits of the continental shelf together and in relation to the concept of the economic zone.

72. Some proponents of the economic zone believed that the coastal States' rights under that concept would include those they now enjoyed over the sea-bed and subsoil by virtue of the Geneva Convention and that the continental shelf would be merged into the economic zone. Others who emphasized the geomorphological rationale of the continental shelf, particularly States with continental margins extending beyond 200 miles, favoured retention of the concept of the territorial shelf.

73. The problem could be examined from different angles. One possibility was that a single régime of the economic zone should apply to the entire ocean space under national jurisdiction, consisting of the sea-bed, the subsoil and the superjacent waters. A second possibility was two different régimes, one applying to the patrimonial sea and the other based on the 1958 Geneva Convention, for the part of the continental shelf extending beyond 200 miles. A third approach could be for different régimes to apply to the superjacent waters and the sea-bed including the subsoil. Yet another formula was the one advanced by Argentina, under which the economic zone or patrimonial sea would consist of the continental shelf up to the outer edge of the continental rise or up to a distance of 200 miles wherever the outer edge was less than that distance from the coast, and the superjacent waters up to a distance of 200 miles from the baseline used for measuring the territorial sea. The concept of continental shelf would not completely disappear but would become an integral part of the economic zone.

74. His delegation favoured the idea of including the concepts of continental shelf and exclusive fisheries zone into the wider concept of the economic zone. It would prefer a single régime of the economic zone which covered the sea-bed and the subsoil as well as the superjacent waters. Under that régime the coastal State would have sovereign rights over both the living and non-living resources within the zone not exceeding 200 nautical miles from the coast. His delegation did, however, feel that coastal States whose continental shelves extended beyond 200 miles were justified in insisting that the rights they already enjoyed should be safeguarded. It would therefore be prepared to give sympathetic consideration to other proposals based on geomorphological considerations so long as they did not cause prejudice to the rights and jurisdiction of the continental coast States which the concept of economic zone or patrimonial sea sought to establish.

75. Mr. CHEHAB (Egypt), having briefly recalled the history of the concept of the continental shelf, said that since the Truman Proclamation of 1945, the shelf had been considered as a prolongation of the territory of the coastal State, in which no one could undertake exploitation of natural resources or claim rights without the express consent of that State. However, the coastal State could not hinder the laying or maintenance of underwater cables or pipelines or unjustifiably hamper freedom of navigation, fishing and scientific research.

76. The 1958 Geneva Convention had been designed to establish a clear, stable, legal régime. However, it had not settled all the problems of the continental shelf State, and in some respects it was too vague.

77. The definition of the continental shelf in article I combined the criteria of depth and exploitability, which were in fact incompatible. Application of the criterion of exploitability had varied with the capacity of States, and had been a disad-

vantage to the developing countries. Clearly, the extreme vagueness of the definition might lead to disputes whenever, with the progress of technology, it became possible to exploit the continental shelf beyond a depth of 200 metres.

78. The criterion laid down in the 1958 Convention for the delimitation of the outer edge of the continental shelf was, moreover, inadequate. The time had come to re-examine the legal régime established by that convention and to adopt a practical, rational criterion. The idea of the exclusive economic zone or patrimonial sea, based on the criterion of distance, would have the advantage of precision and equity: everything beyond a given distance would belong to the international community and would be managed by an international authority on behalf of all nations.

79. The idea of the exclusive economic zone, which had been set forth in the Declaration of the Organization of African Unity adopted at Addis Ababa in 1973 and at Mogadiscio in 1974 (A/CONF.62/33) and endorsed by the Declarations of the League of Arab States in 1973 and 1974, would grant coastal States a set of sovereign rights over all the biological and mineral resources of the zone, over scientific research and over pollution control. It would thus subsume the idea of the continental shelf, and be more in keeping with the recent progress of technology.

80. His delegation was nevertheless aware that there were other aspects to the problem which must be considered, and it therefore reserved the right to return to the matter at a later stage.

81. He hoped to be able to comment on concrete proposals submitted to the Committee at a later stage.

82. Mr. BALLAH (Trinidad and Tobago) said that his delegation, while fully aware of the need for new norms to reflect technological advances and the requirements of international social justice, nevertheless believed that the concept of the continental shelf was a fundamental principle which must be retained in any new convention. The criteria for delimiting the outer limits of the shelf should, however, be made more definite.

83. No delegation had disputed the fact that the continental shelf was the natural prolongation of the land territory of the coastal State. Some had disputed the indeterminate nature of the exploitability criterion in the legal definition of the continental shelf contained in the 1958 Geneva Convention; the inequities and inconsistencies which might result from the application of criteria based on depth, geomorphology and exploitability; and the assumption that coastal States should exercise sovereign rights over the resources of the entire natural prolongation of their land territory, to the exclusion of other States and the international community.

84. His delegation felt that the exploitability criterion ought to be abandoned. It had been incorporated into the legal definition of the continental shelf in order to protect the vested interests of those States which possessed narrow shelves. Abandonment of that criterion would not adversely affect the interests of those States once the Conference had adopted the concept of a 200-mile exclusive economic zone or patrimonial sea, which would constitute a progressive development of the law and not a codification of existing law.

85. With respect to the contention that inequities would arise if the criterion based, *inter alia*, on geology and geomorphology were to be applied, his delegation felt that nature itself had checks and balances: the absence of a continental shelf in certain States had redounded to their benefit in that they were endowed with fine natural harbours and unspoiled beaches, and, in certain cases, with fertile fishing grounds.

86. Although the argument that coastal States should not benefit exclusively from the natural resources of the entire natural prolongation of their land territory was a persuasive one, his delegation felt that the Conference should in no way

deprive States of the sovereign rights which they exercised over their submerged territory. Very few States had natural prolongations or continental margins which went beyond 200 miles. In his delegation's view, such States were entitled by right to the full extent of their continental shelves, but they should share with the international community a portion of the natural resources of their continental shelves lying beyond 200 miles.

87. His delegation shared the view of the Philippine representative to the Fourth Committee of the 1958 Conference on the Law of the Sea that the continental shelf as defined by the 1958 Convention should be regarded as merely declaratory of the sovereign rights of the coastal State to explore and exploit the natural resources of its continental shelf. The existence of such rights was not derived from any specific provision of international law; it was inherent in the sovereignty which the coastal State exercised over its adjacent land territory.

88. Trinidad and Tobago, as a small developing island State, exercised sovereign rights over its continental shelf for the purpose of exploring and exploiting its natural resources for the benefit of its people. That right was inherent in its sovereignty and needed no promulgation. Trinidad and Tobago had had no cause to rely on the exploitability criterion. His delegation therefore supported the definition of the continental shelf in physical terms and commended to the Committee the following definition of the continental shelf: "The continental shelf of a coastal State extends beyond its territorial sea throughout the natural prolongation of its land territory." Where, however, that natural prolongation did not extend up to 200 miles, the coastal State was entitled to claim up to that distance in accordance with the concept of the exclusive economic zone or patrimonial sea.

89. U KYAW MIN (Burma) said that his delegation saw the continental shelf régime as an autonomous régime within the broader frame of the future régime of the exclusive economic zone or patrimonial sea. The continental shelf and the water space should be viewed as forming a whole.

90. His delegation believed that the doctrine of the natural prolongation of the land territory into and under the sea had now attained the status of a basic principle of international maritime law, conferring on coastal States certain legal rights and powers which were original, natural and exclusive.

91. On the central issue of limits, his delegation considered it essential that the paramountcy of the natural prolongation principle should be upheld in formulating the draft articles on the geographic limits of a coastal State's jurisdiction over the sea-bed, both seawards and vis-à-vis another State. The definition of the continental shelf as embodied in the 1958 Geneva Convention, notwithstanding the exploitability clause, had done only partial justice to the natural prolongation principle, which was expressed in the Convention in terms of the natural continental shelf, namely, the 200-metre isobath line. But in geological terms the submerged parts of continents ended not at the edge of the natural continental shelf, but at the edge of the continental margin. The new definition of the continental shelf to be elaborated by the Conference must express "natural prolongation" in terms of the continental margin. His delega-

tion could not agree to the proposal to establish a uniform distance criterion for determining the outer limits of the continental shelf, for that would divest many coastal States of their primordial rights over a portion of the submerged part of their continental land mass, which rights were recognized under the existing law.

92. Since the continental margin in the Bay of Bengal, whose waters washed the entire sea coast of Burma, was very wide, the principles and modalities of delimiting the continental shelf between States were of particular interest to his delegation. The most glaring omission in article 6 of the 1958 Convention on the Continental Shelf was the absence of any reference to the natural prolongation principle. That should be corrected in the new convention. Since that principle was the source of the continental shelf rights of coastal States, it should also form the basis for the establishment of continental shelf boundaries between States, wherever applicable. His delegation would return to that matter when the Committee discussed item 6 of its agenda.

93. Turning to the nature and scope of coastal State jurisdiction over the continental shelf, he pointed out that existing international law recognized the coastal State as having exclusive sovereign rights for the purpose of exploring the continental shelf and exploiting its resources. Its jurisdiction over the resources of the continental shelf was total. His delegation could thus see no justification for the proposals that sought to impose on coastal States an obligation to share with others part of the revenues derived from the exploration of the mineral resources of the continental shelf. The practical effect of those proposals would be to establish a régime of mixed ownership over those resources. Any such system, however, would be a serious encroachment on the existing rights of coastal States, and would be unacceptable to his delegation. The proposal to remove the living resources of the sea-bed from the definition of continental shelf resources was also unacceptable.

94. The language of article 2, paragraph 1, of the 1958 Convention made it clear that the jurisdiction of the coastal State over the continental shelf was not confined to resource extraction but extended to other specified activities. Article 5, paragraph 8, made it clear that prior consent of the coastal State was mandatory for any research conducted on and about the continental shelf. Under that article, the coastal State was entitled to withhold from another State consent to undertake scientific research on its continental shelf, regardless of the nature of that research. Those were existing rights under the existing law, and his delegation could only deplore the proposals aimed at abrogating them, although it fully recognized the vital role and potential benefits of scientific research. Prior consent must be obtained for any scientific research for whatever purpose anywhere on the continental shelf of a coastal State and within its exclusive economic zone.

95. The CHAIRMAN urged members of the Committee to confine their remarks to new proposals and comments on such proposals, in view of the long list of speakers and the short time available for the discussion. From now on he would rigorously apply the 15-minute limit on speeches decided by the Committee at the 14th meeting.

The meeting rose at 6.10 p.m.

19th meeting

Tuesday, 30 July 1974, at 11.30 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Continental shelf (*continued*)

[*Agenda item 5*]

1. Mr. MIRCEA (Romania) said that his delegation believed that the principle of the natural prolongation of land territory should be supplemented by other more specific principles and rules, including that of the exercise by the coastal State of rights over areas situated off its sea frontage and the use of criteria and methods of delimitation for ensuring the exercise of such rights.
2. As far as the legal régime was concerned, his delegation was in favour of speaking of sovereign rights over the resources of the continental shelf, provided that it was clearly stipulated that such rights were exclusive and that the continental shelf area fell within the economic zone.
3. Should the question of scientific research be considered in the Second Committee, his delegation believed that the consent rule whereby the coastal State authorized research within the continental shelf area should not be further diluted, as it has been in 1958, by the notion that the coastal State could not withhold consent in the case of a request by a research institution to conduct activities of permanent scientific interest.
4. As far as the outer limit of the shelf was concerned, his delegation believed that a distance of up to 200 miles was satisfactory, especially in view of the need to prescribe well-defined limits for the area reserved for the benefit of all mankind. However, its approach to that point was flexible and did not exclude a solution whereby a depth criterion greater than the one selected in 1958 would apply together with other generally acceptable criteria.
5. On the other hand, many changes were required in the 1958 rules concerning delimitation between neighbouring States. Taking as a starting-point the need to provide a uniform régime in respect of the delimitation of marine or ocean space between two neighbouring States, his delegation had drafted certain provisions, which were contained in document A/CONF.62/C.2/L.18. It was pleased to note that the delegation of the Netherlands had submitted a proposal along similar lines (A/CONF.62/C.2/L.14). Unlike the 1958 Convention on the Continental Shelf,¹ article 1 of document A/CONF.62/C.2/L.18 emphasized that delimitation should be effected exclusively by agreement between two neighbouring States in accordance with equitable principles, taking into account all the circumstances affecting the marine or ocean area concerned and all relevant geographical, geological or other factors. That provision, which was basically similar to a paragraph in the judgment of the International Court of Justice in the North Sea Continental Shelf cases,² reflected the concern expressed by many delegations in their general statements and there was therefore no need to dwell on the reasons for its inclusion. As the International Court of Justice had stated in paragraph 86 of its judgment, the agreement rule was a special application of a principle which formed the basis of all international relations and its fundamental character was reinforced by the fact that a judicial or arbitral settlement was not generally accepted. The notion of delimitation by agreement in accordance with equitable principles was crucial to the development of a continental shelf concept.
6. Article 2 of his delegation's proposal introduced a principle of maritime law, the application of which gave effect to the basic principle of natural attachment to the coastal State. The notion that delimitation should, in principle, be effected between the coasts proper of neighbouring States was implied in the 1958 Geneva Conventions. However, it should be formulated more directly and clearly in the future convention and, furthermore, it should include, as a corollary, that the areas situated off the sea frontage of each State must be attributed thereto.
7. The provisions in paragraphs 2, 3 and 4 of article 2 derived logically from other principles laid down in the other articles. Although already reflected in legal doctrine and decisions and in the instrument of earlier Conferences, it seemed appropriate to include them in the future convention in order to facilitate delimitation agreements.
8. Although item 19 concerning the régime of islands, had yet to be discussed, his delegation felt justified in including in its proposal some provisions concerning islets and other small islands, together with low-tide elevations, which, under the 1958 Geneva Conventions, were not entitled to their own marine or ocean space. That principle was explicitly stated by the International Court of Justice in the North Sea Continental Shelf cases, while the records of the 1958 Geneva Conference on the Law of the Sea indicated that the question had been debated at length and that there had been various proposals to include a reference to islands in the definition of the continental shelf. For example, the delegations of Italy and Iran had proposed that the convention should provide for an exception to the general rule in the sense that islands belonging to a continuous continental shelf should not be taken into consideration for purposes of delimitation.³ The representative of the United Kingdom had made a proposal along similar lines.⁴ It was also of significance that the wording of article 1 (b) of the Convention on the Continental Shelf had been adopted by 41 votes to 10, with 25 abstentions. It might be argued that the concept being advanced by his delegation was already implied in international law, but it should not be forgotten that, unless it was spelled out, a principle tended to be subject to different interpretations. It therefore seemed absolutely essential that the special case of islets and small islands situated outside territorial waters and constituting eminences on the continental shelf should be the subject of an explicit provision in the future convention. It should be stressed that the provision in question did not refer to natural stretches of land forming part of an insular or archipelagic State nor to islands under colonial dependence or foreign domination.
9. The main purpose of article 3 of his delegation's proposal was to make it clear that neighbouring States were entirely free to select those methods of delimitation which would provide the most equitable solution. The basis for that provision was to be found in paragraph 90 of the judgment of the International Court of Justice to which he had referred earlier.
10. His delegation's primary motivation in submitting document A/CONF.62/C.2/L.18 was its belief that it was necessary to take into consideration the many different situations which

¹ United Nations, *Treaty Series*, vol. 499, p. 312.

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

³ *Official Records of the United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. 58.V.4), vol. VI, documents A/CONF.13/C.4/L.25/Rev.1 and A/CONF.13/C.4/L.60.

⁴ *Ibid.*, document A/CONF.13/C.4/L.28.

could arise in practice and for which it was possible to formulate unequivocal rules.

11. Mr. POLLARD (Guyana) moved closure of the debate on the item under consideration. With the exception of one new proposal concerning the "natural prolongation" of land territory, the debate was redundant, and amounted to nothing more than a repetition of views which were already well known from the work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction.

12. The CHAIRMAN observed that a number of countries represented on the present Committee had not been members of the sea-bed Committee. He suggested that the representative of Guyana could perhaps modify his motion at least to allow those delegations to speak.

13. Mr. POLLARD (Guyana) accepted that modification.

14. The CHAIRMAN said that in accordance with rule 29 of the rules of procedure, he would permit two speakers opposing closure to speak. Adoption of the motion for closure, under the same rule, would require a two-thirds majority of the representatives present and voting.

15. Mr. NJENGA (Kenya) said that his delegation opposed closure not only because it was on the list of speakers but because delegations had not had a chance to express their views on the new "natural prolongation" proposal. In particular, those delegations which opposed that proposal had not spoken. He hoped that even if the debate was closed, delegations would be given an opportunity to express their views on the proposal.

16. Mr. MBAYA (United Republic of Cameroon) said that the time had not yet come for closure of the debate. Certain delegations might wish to express their views on the proposals which had recently been developed in the Committee.

The result of the vote was 61 against, and 24 in favour, with 22 absentions.

The motion was not adopted, having failed to obtain the required two-thirds majority.

17. The CHAIRMAN said that the motion for closure had reflected the feeling of some delegations that many speakers were repeating views that had already been put forth in the sea-bed Committee. He appealed to all delegations to use their time for the discussion of new proposals and confine their references to past positions to mention of summary records of previous meetings, or other relevant documents.

18. Mr. ROSENNE (Israel) observed that a number of countries represented in the Committee had not participated in the work of the sea-bed Committee. Some were not even Members of the United Nations. Thus, not all delegations were equally familiar with the complex and bulky records of the sea-bed Committee.

19. The CHAIRMAN replied that delegations, in making their statements, could still refer to pertinent United Nations records, citing the appropriate volume and page number. Delegations, including non-Members of the United Nations, could then refer to those documents at their leisure.

20. Mr. CAFLISCH (Switzerland) said that his delegation, representing a land-locked State, took great interest in the question of the exploration and exploitation of sea resources beyond the territorial sea. It believed that establishment of an exclusive economic zone for coastal States adjacent to the territorial sea would necessarily involve the disappearance of the régime provided for in the Geneva Convention on the Continental Shelf. The two systems could not be combined. The Geneva régime could not be retained in the area extending to the edge of the continental margin, or even to the point where the sea-bed ceased to be exploitable.

21. He reminded the Committee of the Maltese proposal in the 1967 General Assembly,⁵ which would have placed a large part of the resources of the sea-bed under a system of equitable collective exploitation, and restrained the growing control which individual States were gaining over those resources. That proposal had sought to remedy a major defect in the Geneva Convention by placing a stable outer limit on the sea area in which the coastal State exercised economic rights. Clearly, its goals would not be attained if the continental shelf régime were retained beyond the proposed economic zone.

22. Furthermore, retaining the continental shelf régime beyond the economic zone would greatly reduce the proposed international sea-bed area, and would, to a large extent, amount to the creation of a *mare clausum* with respect to marine resources. He shared the doubts expressed by the representative of Singapore at the 18th meeting about the value of a common heritage of mankind reduced to the abyssal plains or to unexploitable parts of the sea-bed. It was questionable whether an area truncated to that extent would even justify the establishment of an international authority to administer it.

23. The proposal of many coastal countries to establish an area of fixed breadth in which coastal States could exploit natural resources exclusively had been designed to replace the rules on the continental shelf contained in the 1958 Convention. Those rules, indeed, were considered not very equitable from the economic standpoint, particularly for States whose coasts dropped off abruptly and for developing countries which did not yet have the necessary means to explore and exploit shelf resources. They had also been criticized for allowing freedom of fishing to continue beyond the territorial sea. Since the Geneva régime had been found unsatisfactory and outdated in those respects, it would be difficult to maintain it alongside the proposed new régime. Moreover, it was to be feared that within several years a continental shelf régime beyond the economic zone would give rise to criticisms similar to those which were now being directed against the 1958 system.

24. The continental shelf régime established by the 1958 Convention worked to the disadvantage of a certain number of States, including land-locked States. That would be even more true if an exclusive economic zone were created, and it was easy to see that combining the two systems would aggravate the imbalance still further.

25. His delegation believed that the rights of coastal States over the continental shelf derived from the rules laid down in the 1958 Convention, and that any domestic legislation on the subject must adhere strictly to those rules. To speak of territoriality and national integrity in that connexion, as the representative of Canada had done in introducing document A/CONF.62/L.4 at the 46th plenary meeting, would be to draw conclusions from the judgment of the International Court of Justice in the North Sea Continental Shelf cases which went beyond what was permitted by present international law.

26. His delegation was unconvinced by the argument that the "natural prolongation" doctrine, put forth by several representatives to justify the existence of rights acquired as far as the outer limit of the continental margin, was implicit in the Geneva Convention, or had been "crystallized" by the International Court of Justice in the North Sea Continental Shelf cases. On the contrary, that doctrine found hardly any support in the text of the Convention, article 1 of which gave no importance to the geomorphological configuration of the sea-bed. Although it was true that the International Court of Justice had referred to the continental shelf as a prolongation of the territory of the coastal State, he wished to remind the Committee, as the representative of Singapore had done, that the extent of the shelf, under article 1 of the Convention, was

⁵ *Official Records of the General Assembly, Twenty-second Session, Annexes, agenda item 92, document A/6695.*

limited by the notion of adjacency. Indeed, the Court, in paragraph 41 of its judgment, had said that by no stretch of the imagination could a point on the continental shelf situated about 100 miles, or even much less, from a given coast, be regarded as adjacent to that coast in the normal sense of "adjacency". That statement clearly contradicted the idea that the sea-bed extending beyond 200 miles to the outer limit of the continental margin, *de lege ferenda*, belonged to the continental shelf adjacent to the territorial sea.

27. Mr. VALENCIA RODRIGUEZ (Ecuador) said that Ecuador's lack of a broad continental shelf was one of the compelling reasons why it had been obliged to protect its rights by establishing a 200-mile territorial sea. Establishment of such a sea, and sovereignty over it, was the best way of protecting its many interests.

28. In his delegation's view, the continental shelf should be defined in very clear terms, with precise limits that left no room for doubt. The 1958 Geneva Convention, to which Ecuador was not a party, had not helped to establish a precise delimitation of the outer edge of the shelf and had created confusion because of the incompatibility of the criteria of depth and exploitability.

29. The provisions relating to the continental shelf in a new convention must follow the basic principle that no country should enjoy greater rights over the continental shelf than the coastal State, which needed the shelf for its development and for the survival of its people. The continental shelf was the natural prolongation of the territory of the coastal State, and should belong to that State up to the point where it ended geomorphologically, that is, the point where the abyssal depths began; it was an integral part of the territory of the coastal State, over which the State exercised sovereignty.

30. Since it was a geographic reality that the continental shelf of some States extended beyond the 200 miles of the territorial sea or proposed economic zone, it was unjust to deprive those States of rights which they had acquired without violating international law while broader rights were being recognized for other States in certain maritime areas. Any reduction in the rights of States over the continental shelf would be unjust. His delegation therefore supported the position of the delegation of Argentina that the continental shelf of a coastal State extended beyond its territorial sea to a distance of 200 nautical miles from the applicable baselines, or to the full breadth of the natural prolongation of its land territory when that exceeded 200 miles (see A/9021 and Corr.1 and 3, vol. III, sect. 26). His delegation would support a provision which reflected that idea.

31. The varying characteristics of the continental shelf in various regions and subregions would best be taken into account if solutions to questions relating to the shelf were sought at the regional level.

32. The future convention on the law of the sea must be based on respect for sovereignty of States and, in the case of the continental shelf, on the rights which various coastal States had acquired over the shelf up to the outer limit of the continental rise. In that connexion, the same respect should be given to rights which States had acquired and exercised over other maritime areas, and particularly over the territorial sea. It would not be just or equitable to respect rights of sovereignty over the continental shelf acquired without violating international law by virtue of the legislation of coastal States and not to do the same with regard to sovereign rights acquired by other States, on the same legal basis, over their territorial seas.

33. Mr. YOLGA (Turkey) said that the institution of the contiguous zone should be maintained so as not to create difficulties for countries whose geographical situation or legal system necessitated its retention. Other countries could at their own choosing, however, base their legislation solely on the notion of the economic zone.

34. The fact that in certain cases the continental shelf would be completely encompassed within the economic zone did not diminish its importance. In a good number of cases, the jurisdiction of the coastal State over the continental shelf and the economic zone would be complementary rather than parallel, while in other cases the extent of the continental shelf would be a determining factor in the delimitation of the economic zone.

35. As the international Court of Justice had recognized in its judgment in the North Sea Continental Shelf cases, the legal notion of the continental shelf was based upon the geomorphological reality that the continental shelf was a natural prolongation of the land territory. The new convention should therefore clarify and retain the geomorphological criterion. The retention or the discarding of the 200-metre isobath would have little significance for the régime of the continental shelf. It was essential, however, that the criterion of exploitability should no longer be linked to the ever-increasing advances of technology.

36. The draft article contained in document A/CONF.62/C.2/L.23 sponsored by the Turkish delegation was intended to improve upon the method of delimitation established in article 6 of the Geneva Convention on the Continental Shelf. While article 6 attached prime importance to the principle of delimitation by agreement between the parties, it did not make adequate provision for regular and effective application of that principle. According to the terms of article 6 and in the absence of any binding form of peaceful settlement, the parties to a dispute could refuse to enter into negotiations, or could enter into them for the sake of form, but break off negotiations at whim and then point to the breakdown of negotiations to justify unilateral delimitation. Paragraphs 1, 2 and 3 of the draft article should be considered in the light of such considerations.

37. The "equitable principles" referred to in paragraph 1 of the draft article were the hallmark of the entire method of delimitation, since any rule or procedure which did not produce equitable results should be considered as failing to fulfil its purpose.

38. Article 6 of the Geneva Convention was also defective in that it did not define the term "special circumstances". Nevertheless, such circumstances as the configuration of coasts, the existence of islands or of navigable channels had been mentioned at various stages of the development of the 1958 Convention. The International Court of Justice, as well, had stated in its judgment in the North Sea Continental Shelf cases that the general configuration of coasts and the presence of any special characteristics should be taken into account during negotiations to delimit the continental shelf.

39. In the interest of brevity, paragraph 2 of the draft article made mention of only those special circumstances which seemed most important. The list contained therein was therefore not exhaustive.

40. Paragraph 4 of the draft article left to the States involved the choice of methods to be employed for arriving at an equitable delimitation. Since the geographical situations of States were extremely varied, no single method could be universally applied without creating injustices. The method of the equidistance line, on which the International Court of Justice had already given its opinion, was not an exception to that rule. Despite its advantages of simplicity and mathematical precision, it could not be adopted as the unique and universally applicable method for delimiting the continental shelf. Endorsement in the future convention of only one of the possible methods, even if not made binding on all, would only create a new source of misunderstanding and conflict.

41. None of the elements of the draft article proposed by Turkey were new. They had been drawn from rules and general principles of international law which had been confirmed by case law, jurisprudence and the practice of States and the terminology adopted was that of the judgment of the Interna-

tional Court of Justice in the North Sea Continental Shelf cases.

42. Turning to the other draft article on delimitation submitted to the Committee, he noted that the principles his delegation considered essential were contained in document A/CONF.62/C.2/L.14. The Turkish delegation had reservations, however, with regard to paragraph 2 relating to interim solutions to be applied pending the final determination of delimitation lines, since the parties involved might go ahead with research or exploitation in the unsettled area, thus seriously complicating the eventual settlement.

43. The draft articles submitted by Romania (A/CONF.62/C.2/L.18) were worthy of attention. Article 3 did not single out any one method for delimiting the continental shelf, and thus left the choice to the negotiating parties.

44. With regard to article 5 of the draft articles proposed by Greece (A/CONF.62/C.2/L.25) concerning the preservation of existing rights with regard to the continental shelf, it should be pointed out that only such rights as had been acquired in accordance with the principles of international law could be preserved.

45. Mr. ARAIM (Iraq) said that the concept of the continental shelf was relatively new, and had undergone several changes since its introduction. The two criteria embodied in the 1958 Geneva Convention on the Continental Shelf, namely exploitability and depth, had since come under criticism. The depth criterion had been criticized on the grounds that it discriminated against States with sharply sloping continental shelves, while the exploitability criterion was said to have been rendered obsolete by the progress of technology. Both the exploitability criterion and the notion of the natural prolongation were inconsistent with the principle of the common heritage of mankind. His delegation believed that the limit of the continental shelf should be determined by a distance criterion which would be fair to all States and to mankind as a whole. The international sea-bed area beyond the limits of national jurisdiction should be economically viable.

46. His delegation hoped that the Conference would be able to work out an arrangement for the delimitation of the continental shelf between opposite and adjacent States, since the International Court of Justice in its judgment on the North Sea Continental Shelf cases had established that no single method could be satisfactory in all cases. The method of delimitation provided for in the future convention should take into account the special characteristics of the area and equitable principles. The question of special circumstances needed further elaboration so that States in areas where such circumstances existed could determine the methods of delimitation to be used in accordance with equitable principles.

47. Agreement between the parties concerned was essential and the means envisaged in Article 33 of the Charter of the United Nations would greatly facilitate the negotiations towards that end. There was a need for machinery for the settlement of disputes which might arise from negotiations on the delimitation of the continental shelf or concerning the interpretation and implementation of the provisions of the future convention.

48. His delegation supported the proposals contained in documents A/CONF.62/C.2/L.23 and 28, and recommended that they be taken into account in formulating the main trends of the deliberations.

49. Finally, the exploration and exploitation of the natural resources of the continental shelf should in no way affect the freedom of navigation in the superjacent waters. Measures to safeguard the freedom of navigation should be taken by the coastal State.

50. Mr. ANDERSEN (Iceland) said that since 1948 his Government had been endeavouring to apply the provisions of a law which stipulated that the entire continental shelf area

formed an economic zone over which Iceland claimed control. The Icelandic continental shelf had no mineral deposits, but provided an ideal environment for spawning areas and nursery grounds, as well as a food reservoir, for fish stocks.

51. In the light of consultations with other delegations, his delegation considered that the essential elements of document A/CONF.62/L.4 could provide a basis for constructive discussion leading to general agreement. Those elements were: first, a territorial sea of up to 12 miles with appropriate baselines and archipelagic principles; secondly an economic zone of up to 200 miles, together with provisions ensuring equitable rights for developing land-locked and geographically disadvantaged States; and, thirdly, the exercise of sovereign rights by the coastal State over the natural prolongation of its land territory where such prolongation extended beyond 200 miles. While the details of certain additional items would need to be worked out, the time had come to construct the basic framework of the future convention, and he therefore hoped that other delegations would see fit to join the sponsors of the working paper in document A/CONF.62/L.4.

52. One of the elements to which his delegation attached the greatest importance was the concept of the economic zone of up to 200 miles, which now undoubtedly enjoyed the firm support of the overwhelming majority of the international community. Such support, coming as it did from countries of all the regions of the world, showed that the system of narrow fishery limits, which was weighted entirely in favour of distant-water fishing nations at the expense of coastal States, was now obsolete. It was clear, therefore, that the time had come to draft specific articles embodying the newly acclaimed concept of a realistic economic zone.

53. Mr. PANUPONG (Thailand) said that his delegation strongly favoured the retention of the concept of the continental shelf. That was because since Thailand had ratified the 1958 Geneva Convention on the Continental Shelf, various legal rights had been created in accordance with the régime laid down therein. Long-term concessions had been granted to numerous companies and enterprises, both foreign and domestic, for the exploration of the continental shelf and the exploitation of its resources. Moreover, Thailand had entered into several international agreements on continental shelf boundaries with two of its neighbours. In short, an intricate web of legal relationships, both private and public, had already been established on the basis of the existing régime of the continental shelf. In the circumstances, his delegation was opposed to any proposal which would have the effect of directly or indirectly abolishing the concept of the continental shelf or which would affect in any way the rights and international agreements that derived from existing international law.

54. His delegation believed that recognition of the concept of the economic zone or the patrimonial sea entailed no legal or logical requirement to exclude the concept of the continental shelf. On the contrary, the two régimes were well able to co-exist in any new convention on the law of the sea. Indeed, the majority of the provisions of the 1958 Convention on the Continental Shelf could be transposed and incorporated into the new convention.

55. His delegation agreed with the view that the term "continental shelf" as defined in article 1 of the 1958 Convention was vague, imprecise and open-ended. Embodying as it did the criterion of exploitability, the definition was subject to liberal interpretations that favoured some coastal States. The widest of those interpretations ran counter to the concept of the common heritage of mankind and could deprive it of much of its substance. Indeed, the test of exploitability, if understood in its absolute sense, was inherently incompatible with the common heritage of mankind concept. There was, therefore, a clear need to redefine the term "continental shelf" eliminating the old criterion of exploitability and, at the same time, setting definite limits up to which a coastal State might claim the

adjacent sea-bed and subsoil as its continental shelf. To be acceptable to his delegation, a new definition must also take into account the geophysical and geomorphological characteristics of the area of the sea-bed concerned. In other words, it must be based on the notion of natural prolongation of the land domain, which was considered by the International Court of Justice to be the foundation of the continental shelf entitlement. In the view of his delegation, that notion was identical with the criterion of adjacency enshrined in the Geneva Convention. Thus, while his delegation would support a new definition based on the notion of natural prolongation or adjacency, it considered that such a definition should also prescribe, in the form of a fixed-distance formula, a maximum distance for the outer limit of the shelf. The provisions of the 1958 Convention offered little practical guidance on the delicate problem of the delimitation of the continental shelf boundary as between opposite or adjacent countries. Apart from stipulating that a boundary delimitation must be effected by agreement between the parties concerned, the Geneva Convention gave little indication of the principles on the basis of which the parties should carry out their negotiations with a view to achieving an agreed boundary line. Furthermore, the solution of the equidistance line, to be applied if the parties failed to reach agreement, was only valid in the absence of special circumstances. But, under the Convention, definition of the special circumstances and criteria for determining the boundary line, if there were special circumstances, were all left to the parties concerned to negotiate.

56. In the North Sea Continental Shelf cases of 1969, the International Court of Justice had been of the opinion that the rule of equidistance was not a mandatory rule of international law and that delimitation of a continental shelf boundary was to be effected by agreement in accordance with equitable principles. The Court had then indicated the circumstances and considerations which the parties should take into account in the course of their negotiations. His delegation firmly believed that no system of law could disregard equitable principles and was not convinced by the arguments for the compulsory appli-

cation of the rule of equidistance or by the criticisms levelled at equitable principles. For example, the application of the rule of equidistance did not necessarily result in an equitable division of the area and frequently the result was quite the reverse. Moreover, the rule of equidistance was sometimes discriminatory in its application in the sense that it attached decisive importance to some geographical features or circumstances which might be purely accidental, while at the same time completely ignoring other features and circumstances of greater relevance. The result could be the attribution to one country of an area which in fact was the natural prolongation of the land territory of another country.

57. Equitable principles had often been criticized on the grounds of vagueness, subjective nature and uncertainty of application. In his delegation's view, such criticism would be valid if equity were to be equated with natural justice; but that was not the case. Equitable principles as interpreted by the Court did not signify abstract justice nor did they imply a notion of equality. There could be no question, for instance, of assigning part of a country's continental shelf area to another country or of dividing the area equally between States with different lengths of coastline. Equitable principles as propounded by the Court meant, in his delegation's view, that the parties were free to apply a combination of different methods, rather than a rigid mathematical or cartographical formula. However, they must take into account all the relevant circumstances, including those bound up with the notion of natural prolongation or that of the general configuration of the respective coastlines. Such special circumstances could not be regarded as purely subjective.

58. In view of the foregoing, his delegation wished to support the incorporation into the future convention of the equitable principle concept, as upheld by the International Court of Justice. A spelling-out of the notion of special circumstances would rectify the defects of article 6 of the 1958 Geneva Convention on the Continental Shelf.

The meeting rose at 1 p.m.

20th meeting

Tuesday, 30 July 1974, at 3.05 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Continental shelf (*continued*)

[*Agenda item 5*]

1. Mr. SALLAH (Gambia) said that with the establishment of the economic zone in recognition of the principle of the common heritage of mankind, the old idea of the continental shelf, which benefited very few States, would disappear.

2. His country, as a geographically disadvantaged developing State, approved the concept of the exclusive economic zone as outlined in the Declaration of the Organization of African Unity on the issues of the law of the sea (A/CONF.62/33). That concept should replace the anachronistic idea of the continental shelf as outlined in the 1958 Convention on the Continental Shelf.¹ His delegation believed that it would be unfair to reserve for the exclusive use of a few States large portions of the sea-bed beyond the 200-mile limit. If the concept of the continental shelf were to survive, it would be largely at the expense of the common heritage of mankind, and no one

should then be surprised if the Conference was to be dubbed a monumental hoax.

3. His delegation was in favour of the median line solution for settling disputes and felt that the Conference should adopt a provision of that kind because it offered a fair means of establishing boundaries. It realized, however, that such a provision need not preclude other offshore boundary agreements between States.

4. Finally, his delegation thought that any convention must include provision for delimiting boundaries between adjacent and opposite States and machinery for the peaceful settlement of disputes among such States.

5. Mr. MOLODTSOV (Union of Soviet Socialist Republics) welcomed the trend in support of the concept of the continental shelf, one of the basic principles of the existing law of the sea. The Soviet Union, as a party to the 1958 Geneva Convention on the Continental Shelf, had incorporated that principle in its national legislation and had expressed support for it in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction.

¹ United Nations *Treaty Series*, vol. 499, p. 312.

6. Coastal States possessed sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources; that was no coincidence, since the continental shelf was a prolongation under the sea of the territory of the coastal State and was organically joined to that territory. It was also significant that the resources of the shelf, as compared with the living resources of the superjacent waters, were non-renewable and non-movable; it was logical, therefore, that the sovereign rights of States over the continental shelf should not extend to the superjacent waters.

7. He agreed on the importance of fixing the outer limit of the shelf, for which the 1958 Convention offered no precise criteria. In the light of new technological advances in exploiting the resources of the deep-sea-bed, that task was becoming increasingly urgent.

8. Under the draft basic provisions on the question of the outer limit of the continental shelf submitted to the sea-bed Committee by the USSR (A/9021 and Corr.1 and 3, vol. III, sect. 15), the coastal State would have the right to establish that limit within the 500-metre isobath area, while in areas where the deep sea was close to the coast, that limit could be established within 100 miles from the coast.

9. In its statement at the 22nd plenary meeting, his delegation had indicated that, if a mutually acceptable solution was found to the basic questions of the law of the sea, the Soviet Union was ready to recognize the right of the coastal State to establish an economic zone of up to 200 miles and to dispose of all living and mineral resources within it. In that connexion, his country's current position regarding the limit of the continental shelf was that the coastal State had the right to establish the outer limit of the shelf within 200 miles from its coast or within the 500-metre isobath line, whichever it chose. Those two criteria would protect the interests both of States with a wide shelf and States with a narrow shelf. At the same time, the 500-metre isobath criterion was based on physical and geological factors which, in the view of many delegations, should be considered in any delimitation of the shelf.

10. The growing tendency for coastal States to extend their rights to the mineral resources of the sea-bed over the broadest possible area could be seen, for example, in the position of many States which were trying to establish the outer limit of the shelf along the outer limit of the continental margin—in other words, at a depth of 2,500–4,500 metres. However, that would mean that some States with a long coastline would have a shelf some 500–700 miles wide. In that case, what would be left of the common heritage? Only the areas of abyssal depths. For the purposes of the rational harmonization of the interests of coastal States and of the international community as a whole, the Soviet delegation considered that it was possible to take the 500-metre isobath as the depth criterion, since that would correspond to the actual boundary of the shelf, in the geomorphological sense, in all parts of the oceans of the world.

11. However, since there was now a group of countries which would deny to States the right to exploit the mineral resources of the sea-bed beyond the limit of the continental shelf, his delegation reserved the right to define its position further regarding the limits of the shelf with a view to safeguarding its own interests in exploring and exploiting the mineral resources of the shelf adjacent to the territory of the USSR.

12. Mr. NJENGA (Kenya) said that the overwhelming majority of States, particularly those which genuinely supported the concept of the common heritage of mankind, had rejected the exploitability criterion as a yardstick for determining the outer limit of the continental shelf. Accordingly, article 19 of the nine-Power draft (A/CONF.62/L.4) was designed to replace the existing legal definition of the continental shelf by a geomorphological one which would encompass the broader geological concept of the continental margin. The African

countries, however, on the whole found that concept unacceptable.

13. From the legal point of view, the margin concept could not be justified by existing rules of international law. For example, the Truman Proclamation of 28 September 1945—which had given rise to the biggest scramble for territorial claims since the Berlin Conference of 1885—described the continental shelf as an extension of the land mass of the coastal nation, without specifying an outer limit. None of the many claims which had followed in its wake mentioned either the continental slope or the rise, except for the Proclamation of Honduras which could be regarded as incorporating the margin by implication.

14. Reference to the geomorphological concept of the continental margin was also conspicuously absent from the legislative history of article 1 of the Geneva Convention on the Continental Shelf, as could be seen from a study prepared by the United Nations Secretariat for the *Ad Hoc* Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. The International Law Commission, after some hesitation, had eventually settled in 1956 for a combination of two criteria: exploitability and a 200-metre depth. The unfortunate addition of the exploitability criterion had been intended not so much to sanction annexation of the margin but rather as a form of compensation to countries with a narrow continental shelf.

15. Similarly, an examination of the proposals submitted to the Fourth Committee of the 1958 Geneva Conference clearly showed that the concept of the margin was not seriously considered by the Conference. Of the many proposals, the only one to attempt a definition on a geological basis was that submitted by the Panamanian delegation,² which referred to the continental slope, but nevertheless contained an element of exploitability.

16. It would be interesting to hear from the delegations that had submitted proposals to the 1958 Geneva Conference, which did not reflect the geomorphological concept, on what grounds they believed that, only 16 years later, the law should be changed in such a way as to facilitate the appropriation of some 30 or 40 per cent of the ocean space for the benefit of a few countries—mainly in Europe, North America, Asia and the eastern parts of Latin America—to the detriment of almost the entire African continent and the geographically disadvantaged States, including the land-locked countries.

17. One of the major weaknesses of the concept of the margin as the outer edge of the area of national jurisdiction was that neither the scientists nor its proponents were in a position to state with any degree of certainty where the margin ended. It would be a tragedy if States were allowed to determine for themselves how far the natural prolongation of their land territory extended, because they would then be tempted to claim areas in which there were valuable deposits, particularly hydrocarbons, and the International Sea-Bed Authority would be deprived of all but the sea-bed minerals. If that happened, the Authority would not be able to generate sufficient revenues to assist the developing countries. Moreover, as the Secretary-General of the United Nations Conference on Trade and Development (UNCTAD) had reminded the First Committee at the 6th meeting, intensive mineral exploitation of the sea-bed beyond national jurisdiction could result in heavy losses for land-based producers from developing countries.

18. It should be stressed that the beneficiaries of the geomorphological criterion for the most part would be the richer countries; they would include the United States, Canada, the United Kingdom, the Soviet Union, Norway, Australia, New Zealand, India, Indonesia, the Philippines, China, Brazil and Argentina.

²See *Official Records of the United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. 58.V.4), vol. VI, document A/CONF.13/C.4/L.4.

19. It was for those reasons that the African Heads of State and Government in the Declaration of the Organization of African Unity had decided to recommend that the concept of the continental shelf should be subsumed under the concept of the exclusive economic zone of 200 nautical miles measured from the appropriate baseline; and that the area beyond would be part of the international area to which the common heritage of mankind concept applied and where no activities could be conducted without the approval of the international community, on such conditions as it might determine. It was only by carrying out those recommendations that the principle of the common heritage of mankind, as laid down in General Assembly resolution 2749 (XXV), would have any meaning.

20. Mr. KIAER (Denmark) said that the question of the delimitation of the continental shelf was of the greatest importance. When a country faced the open sea, the main issue was to determine the limit in relation to the international sea-bed area. To avoid future international disputes about the exact border-line, a clear-cut criterion was necessary. His delegation was prepared to support a criterion of up to 200 miles measured from the baselines.

21. A few States, basing themselves on the rules of the Geneva Convention on the Continental Shelf, made claims over those parts of the continental shelf beyond the 200-mile limit which represented the geological prolongation of the shelf to its outer margin. That was a problem which his delegation would be ready to consider in the context of a balanced solution of other problems of an economic nature. The concept of an intermediate zone or a sharing of revenues had also been mentioned in that connexion; such proposals might prove useful in the solution of the problem.

22. In narrow waters where two or more States shared the same continental shelf and were opposite or adjacent to each other, the question of delimitation presented difficult problems. The point of departure for discussing them should be article 6 of the 1958 Geneva Convention on the Continental Shelf, which provided that the delimitation should be determined by agreement; in the absence of agreement, unless another solution was justified by special circumstances, the boundary should be determined by the median line. Where the same continental shelf was adjacent to the coastal States bordering each other, the rule in article 6, paragraph 2 of the Convention was very similar to the rule in the case of States opposite each other: the delimitation should be determined by agreement and, as a residual rule, the Convention established the principle of equidistance.

23. In his delegation's view, the principle of equidistance, based as it was on law and practice, had won general recognition for very good reasons. Without that rule, there would be no objective criteria on which to base a delimitation: everything would be open to negotiation and *ad hoc* solutions. That would be a negation of the rule of law and could lead to an increasing number of disputes among States.

24. On the question of the continental shelf of islands, the basis for the Committee's deliberations should also be the 1958 Geneva Convention on the Continental Shelf. In article 1, paragraph (b) of that Convention, the continental shelf of islands was defined in the same way as for other territories. International law concerning the delimitation of the continental shelf was, as a general rule, the same for islands as for the State as a whole. An oceanic island would have a full sea-bed area, and for an island situated closer to another country, the delimitation of the continental shelf would be based on the principle of equidistance in accordance with article 6, paragraph 1 of the Geneva Convention.

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

25. Mr. KIM (Democratic People's Republic of Korea) said that, in the case of small countries, the rights of the coastal State over the continental shelf had always been subject to the

whim and cunning of imperialists and colonialists, whose traditional aggressive policy against the weak nations had now been extended to the sea-bed under such pretexts as joint investigation, joint development and technical co-operation. The imperialists and colonialists had turned other countries' continental shelves into so-called joint development zones in return for a few dollars and were trying to gather the sea-bed's resources with their superior technical equipment. With the intensification of aggression and plunder, the victim countries had become increasingly conscious of their rights as masters and owners of their resources, as was apparent from their legitimate struggles to protect those resources. It was only right therefore that those countries should exploit their continental shelves for their own prosperity and economic development.

26. His delegation hoped that the following points would be taken into account in connexion with the continental shelf. First, it was reasonable for the coastal State to define the limits of the continental shelf, according to its specific geographical conditions, as the natural prolongation of the land territory beyond its territorial sea or economic zone. Secondly, the coastal State had sovereign rights over the natural resources of the continental shelf, such resources including the mineral and other non-living resources of the sea-bed and subsoil and the living vegetable organisms and animals belonging to sedentary species. Thirdly, all States should enjoy freedom of normal navigation and overflight in the superjacent waters of the continental shelf beyond the territorial sea, but without prejudice to the coastal State's economic activities in exploring and exploiting the continental shelf. Fourthly, the laying of submarine cables and pipelines by one State on the continental shelf of another State should be subject to the consent of the latter. Fifthly, the boundary between States adjacent or opposite to each other should be determined by consultation, according to the principles of an equidistant or median line. Sixthly, exploitation of the sea-bed and ocean floor beyond the limits of national jurisdiction should be strictly suspended until the new international régime of the continental shelf had been established.

27. On the question of passage of warships through the territorial sea and straits, his delegation considered that the passage of all non-commercial vessels, including warships and submarines, through the territorial sea and the straits forming part of it, whether used for international navigation or not, should be subject to prior authorization by the competent authorities of the coastal State.

28. Korea, having suffered invasion by imperialist Powers and occupation by foreign forces, naturally had a cautious attitude towards the question of passage of foreign vessels through the territorial sea. It fully understood and supported the demand of coastal States and straits States for a clear distinction to be drawn between merchant ships and warships.

29. Mr. NGUYEN HUU CHI (Republic of Viet-Nam) said that his Government attached great importance to exploiting the potential natural resources of the southern part of its continental shelf. It considered the rights of the coastal State over its continental shelf to be sovereign and exclusive, and in 1967 the President of the Republic of Viet-Nam had made a solemn declaration to that effect. His Government was in favour of any formula for delimiting the continental shelf based on the criterion of 200 nautical miles measured from the applicable baselines, on the understanding that wherever the continental shelf extended beyond that distance, the limit should be the outer edge of the continental margin.

30. His Government was equally concerned with the question of delimitation between adjacent and opposite coastal States. In view of the geographical and geomorphological complexity of the area in question and the divergent interests involved, his delegation was in favour of direct, bilateral negotiations or peaceful settlement through international organizations.

31. His delegation had examined all the proposals before the Committee and endorsed those which would allow the countries in dispute to delimit the continental shelf by agreement, taking into account all equitable factors.

32. Mr. KEDADI (Tunisia) said that as his country had a wide continental shelf with a particularly gradual slope, it had a vested interest in defending the concept of the continental shelf with a view to exploiting the resources available in that natural prolongation of its territory, particularly since its land resources were limited and its population was increasing rapidly. Under the terms of the Geneva Convention, Tunisia could have claimed a continental shelf extending in certain parts beyond 200 miles. It had not done so because it considered that such claims were unreasonable on legal and moral grounds.

33. In the view of his delegation, the exploitability and depth criteria were unsatisfactory for delimitation purposes. His country supported the concept of the exclusive economic zone which would include the former concept of a continental shelf. The position of Tunisia and 41 other African countries on that issue was defined in the Addis Ababa Declaration of the Organization of African Unity of 1973 which had recently been endorsed by the African Heads of State and Government at Mogadiscio in 1974. The concept of an exclusive economic zone based on the distance criteria had also been supported by a large number of Asian and Latin American countries at the Fourth Conference of Heads of State or Government of Non-Aligned Countries held at Algiers in 1973, and by some European countries.

34. Any progressive evolution in international law must be based on equitable principles in order to be operative and effective. The provisions of the 1958 Geneva Convention on the Continental Shelf clearly favoured a few technologically advanced countries to the detriment of the interests of the developing countries. However, as the principle of the common heritage of mankind was now accepted, that situation should be changed in order to provide a more equitable balance and to establish more harmonious relations between the States.

35. Countries claiming a continental shelf of over 200 miles should modify their position and adopt a conciliatory attitude to the proposed International Sea-Bed Authority. They should share the marine areas separating the two régimes with the Authority on an equitable basis and adopt the same behaviour vis-à-vis the Authority as they would in the case of adjacent or opposite States with which they shared a marine area, in keeping with the provisions of the 1958 Geneva Convention and the judgments of the International Court of Justice. The concept of the median line and geographical, geological and geomorphological criteria were also useful for delimitation purposes. It was important to ensure that the Authority would have sufficient resources to enable it to accomplish its mission.

36. Introducing the draft article on the delimitation of the continental shelf or the exclusive economic zone sponsored by Tunisia and Kenya (A/CONF.62/C.2/L.28), he said the sponsors had submitted a single article on those two issues because they considered that the concept of the continental shelf was subsumed in that of the exclusive economic zone. He requested the Chairman to take that document into account when the exclusive economic zone was discussed and to include the proposal in the summary of issues relating to the continental shelf and the exclusive economic zone.

37. Mr. GAYAN (Mauritius) stated his country's position on draft article 19 in document A/CONF.62/L.4, of which his country was a sponsor.

38. His country regarded the continental shelf as the natural prolongation of the land territory of the coastal State. In that connexion, he referred to the 1969 judgment by the International Court of Justice on the North Sea cases.³ The item under

discussion was already firmly settled and was part of customary international law, State practice and national legislation.

39. His country supported the Declaration of the Organization of African Unity and the resolution on the law of the sea adopted at the Fourth Conference of Heads of State or Government of Non-Aligned Countries held at Algiers in 1973. As the Organization of African Unity had not touched on the issue of the continental shelf, his country would abide by the Algiers resolution which stated that the régime of the exclusive economic zone was without prejudice to that of the continental shelf.

40. He endorsed the statement by the President of Mexico at the 45th plenary meeting concerning the demarcation between the national area of jurisdiction and the international area. The sponsors of working paper A/CONF.62/L.4 were intending to circulate draft articles on that aspect of the continental shelf problem.

41. His country had enacted national legislation based on the provisions of the 1958 Geneva Convention on the Continental Shelf to which it was a party. Although his country was not yet in a position to exploit its continental shelf, it hoped that the resources therein would provide a means of solving its multifarious economic problems. The sovereign rights of a State over its continental shelf up to the continental margin were not contingent upon its ability to exploit it. He endorsed the statement made by the representative of Australia at the 17th meeting in that connexion.

42. As no two coastal States had identical continental shelves, there could be no single formula for delimitation of the continental shelf. The only solution was to recognize the sovereign rights of coastal States in the continental shelf right up to the continental margin or rise. Where that margin was at a distance exceeding 200 miles from the baseline, provision could be made for the requirements of developing land-locked States and developing geographically disadvantaged States by using a revenue-sharing system.

43. Mr. JACOVIDES (Cyprus) said that by and large, the position of his country was in agreement with provisions of the 1958 Geneva Convention on the Continental Shelf, to which it was a party. Referring to article 1 (b) and article 6 of the Convention, he said that while depth and exploitability criteria had been used to delimitate the extent of the continental shelf, his country had an open mind on other criteria such as distance, particularly in the light of technological developments since the adoption of that Convention. Whatever decision the Conference might adopt regarding the criterion to be employed for delimitation purposes, he emphasized that, in the case of States opposite or adjacent to each other, and especially in the case of narrow seas where overlaps of continental jurisdiction were the rule rather than the exception, the line of delimitation of the continental shelf between such States should be the median line, unless the States concerned, on an equal footing and in accordance with the requirements of the Vienna Convention on the Law of Treaties,⁴ decided by agreement to apply a different method or make any adjustments necessitated by what might objectively be described as "special circumstances". There was an obvious need for objective criteria in that regard. Particular care should also be taken in invoking the judgment of the International Court of Justice in the North Sea Continental Shelf cases: the Court's findings in that judgment should be seen in their proper perspective and in the light of Article 59 of the Statute of the International Court of Justice. In the delimitation of the continental shelf of islands the same principles should be applied as in the case of continental territory. His delegation shared the views expressed by many members of the Committee that islands were *mutatis mutandis* in the same

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

⁴ *Official Records of the United Nations Conference on the Law of Treaties, 1968 and 1969.* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27.

tradition as continental territories in so far as rights and obligations under international law were concerned. If any discrimination were to be made it should be in favour, not at the expense, of islands which relied heavily on the resources in their maritime zones. In that connexion, he strongly endorsed the statement by the Prime Minister of the Cook Islands at the 46th plenary meeting.

44. Mr. VINDENES (Norway) said that article 19 of document A/CONF.62/L.4, of which Norway was a sponsor, dealt with the definition of the term "continental shelf" and provided for the sovereign rights of the coastal State to explore and exploit its natural resources. The sponsors believed nevertheless that the article would have to be supplemented by other provisions.

45. As a joint proposal, document A/CONF.62/L.4 could establish the basis for subsequent meaningful negotiations with other groups of delegations aimed at solutions which could achieve broad agreement in the Conference as a whole. The joint proposal did not imply the withdrawal of proposals submitted previously by the sponsors.

46. Since the sponsoring delegations did not constitute a homogeneous interest group, their joint working paper was the result of long negotiations to accommodate the interests of all the sponsors, even though it did not fully meet the requirements of any one of them. The articles contained in the working paper were not intended to be exhaustive.

47. The retention of the continental shelf concept must be one of the seven main elements in the package solution which the Conference had to work out. New criteria for defining the continental shelf had to be found to replace the exploitability criterion of existing international law.

48. The definition proposed in article 19 embodied both a distance criterion of 200 miles and provisions for those States whose continental shelf extended beyond 200 miles and over which they already had sovereign rights by virtue of the exploitability criterion. It would be neither just nor realistic to disregard the distinction on which existing international law was based between States which had very extensive shelves and those which did not.

49. In view of the fact that article 10, on the economic zone, provided for the sovereign rights of the coastal State for the purpose of exploration and exploitation of the natural resources of the sea-bed, the subsoil thereof and superjacent waters, the question had been raised as to why the concept of the continental shelf was necessary at all. The sponsors of the working paper believed that general agreement at the Conference would best be ensured by marrying the old concept of the continental shelf to the new concept of the economic zone so as to reassure all concerned that the new convention would not amount to an abolition of existing rights of the coastal State.

50. Mr. MOLAPO (Lesotho) outlined the historical background to the concept of the continental shelf. The 1958 Geneva Convention on the Continental Shelf legalized unilateral territorial extension by the participating States, who were now asking for approval of that deed of colonial usurpation.

51. A backlash reaction had evolved and the countries of the developing world were now seeking to protect their interests and preserve their resources by concepts such as the economic zone or patrimonial sea. His delegation hoped that irresistible pressure would steadily build up to halt the legalized annexation of submerged land masses under the guise of the concept of the continental shelf. Comparison of the concept of the territorial sea and the continental shelf clearly demonstrated the fallacy of the argument in support of the latter. It could never be doubted that the territorial sea appertained to a particular territory; the continental shelf, however, by its very name, indicated an extension of the land mass of the continent as a whole and not merely an extension of the territory of the coastal States.

52. The Conference had the duty to undo past wrongs and injustices to the land-locked and other geographically disadvantaged countries and the international community as a whole. The colonial concept had had its day and should now be superseded by the concept of the economic zone which took account of the interests of the world community as a whole.

53. His country supported the establishment of a regional resources zone in the international sea area superjacent to the territorial seas of coastal States. Such a régime would have the effect of limiting the jurisdiction of all coastal States to the extent of their territorial seas. At the same time, it would give them equal participation with all other States of the geographical region in the regional resources zone. Such a regional régime would also eliminate nebulous claims to the continental shelf based on conflicting definitions of that concept, such as the exploitability criterion and the marginal theory, which would invalidate the principle of the common heritage of mankind.

54. Mr. RABAZA (Cuba) said that the depth and exploitability criteria contained in the 1958 Geneva Convention on the Continental Shelf, to which his country was not a party, had been superseded by contemporary reality. His delegation considered that the distance criterion could provide a means of establishing a balance between the interests of the coastal States and the international community. In the case of closed or semi-enclosed seas, the median line between the States would be the limit of national jurisdiction.

55. His delegation considered that coastal States exercised sovereign rights for the purposes of exploration and exploitation of the resources of its continental shelf to a distance of 200 miles, or in some instances to the lower outer edge of the continental rise, without prejudice to the régime in the superjacent waters. When the edge of the continental rise was located within the 200-mile limit, the latter distance would be the limit of the continental shelf.

56. His delegation supported the proposal at the 18th meeting by the representative of Argentina, a country whose continental shelf extended beyond 200 miles and was clearly determinable. It also supported that country's demand for the restoration of its sovereignty over the Malvinas Islands, which were located within its continental shelf.

57. Mr. KNOKE (Federal Republic of Germany) said that his delegation was deeply concerned by the proposed creation of a vast zone adjacent to the territorial sea in which the coastal State would exercise sovereign rights over its renewable and non-renewable resources, for the creation of such a zone would inordinately reduce the international sea-bed area. Furthermore, if the concepts of the enlarged territorial sea and economic zone were also to be applied to archipelagic States or States containing archipelagos, the international sea area would be even further reduced.

58. The establishment of a 200-mile exclusive economic zone would mainly benefit the already prosperous States bordering on the Atlantic or Pacific oceans which had the means to develop their fisheries even further and to carry out the exploitation and exploration of mineral resources. It was difficult to understand how, at a time when sacrifices were being asked of some States, others were hoping to obtain not only an extensive economic zone, but a continental shelf extending up to the limit of the continental margin even where that went beyond the 200-mile limit.

59. The delegation of the Federal Republic of Germany preferred the retention of the 200-metre isobath and the discarding of the exploitability criterion. A distance criterion was preferable for practical reasons. The theory according to which the continental shelf was the natural prolongation of the coastal State's territory had been advanced to justify the sovereign rights of the coastal State up to the limit of the continental margin, even where that went beyond the 200-mile limit. If

such a régime was adopted, within a few years it would be claimed that in the interests of a uniform régime the rights of the coastal State should be extended to the renewable resources of the superjacent waters of the continental shelf.

60. His delegation was willing to take into account existing rights in areas where exploitation had been carried out beyond the 200-mile limit. Nevertheless, it did not want new claims to be created on the grounds of the natural prolongation theory which had not been the basis of article 1 of the 1958 Geneva Convention.

61. If a 200-mile limit was set for the economic zone, that limit should also apply to the continental shelf. New claims should not be advanced on the basis of a theory that was purely geographical and geomorphological.

62. Mr. VANDERPUE (Ghana) said that the drafters of the 1958 Geneva Convention on the Continental Shelf, to which his country was not a party, had appreciated the new aspects of the problems they had been confronted with and had made provision in article 13 for the revision and review of that Convention. They had been in the same position as the third Conference which faced the unprecedented task of drawing up rules for international machinery to administer the common heritage of mankind.

63. The Convention on the Continental Shelf had been useful in reconciling conflicts of economic interests which had escalated as a result of the 1945 Truman Proclamation on the continental shelf. Nevertheless, it had given rise to considerable criticism because it enabled coastal States to appropriate areas of the sea-bed. Although freedom of fishing was guaranteed in the superjacent waters, it was the view of his delegation that freedom of any kind was meaningless if all beneficiaries were not able to avail themselves of it. In fact, freedom of fishing in superjacent waters constituted a licence to a few developed countries to exploit the fishery resources of those waters at the expense of the international community. Furthermore, the definition of the shelf in the Geneva Convention, based on the criterion of a 200-metre depth limit or, beyond that limit, on the criterion of the exploitability test, created a shelf which, with advances in sea-bed technology, and the potential to expand both laterally and seaward. That was unsatisfactory. It was important therefore that the limits of the continental shelf should be fixed more permanently through the adoption of a distance criterion, so as to avoid international conflict. His delegation was opposed to the exploitability criterion which, in its view, did not do full justice to the interests of the developing countries; nor did it agree with the artificial distinction drawn by the Convention between sedentary species and free swimming fishes in the water column. It also considered that the vagueness of the language and concepts used in articles 4, 5 and 6 were a potential source of controversy.

64. Along with other developing nations, Ghana supported the concept of the economic zone which would ensure precise definition of limits and equitable sharing and proper control of the resources of the marine environment while safeguarding the economic interests of coastal States. His delegation hoped that the Conference would establish a 12-mile territorial sea, an economic zone of 200 miles beyond that limit and an international area, on the basis of a package deal.

65. His delegation shared the opinion of the Austrian delegation that there was no need to maintain the concept of the continental shelf if the Conference decided to establish an economic zone beyond the territorial sea. It was the view of his delegation that the concept of the economic zone and the continental shelf were mutually exclusive. The Declaration of the Organization of African Unity had not mentioned the concept of the continental shelf and his delegation found it difficult to appreciate the paradoxical position of States which supported both concepts. The nine advantaged States which were the sponsors of document A/CONF.62/L.4 had based their claims

on acquired rights under the 1958 Geneva Convention on the Continental Shelf. In the view of his delegation, it was doubtful whether those claims could be justified on that basis. Furthermore, the majority of States participating in the Conference were not parties to that Convention. He hoped that the nine States would give up those claims for the common good. However, international law could only impel, and since there was no means of compelling those States to relinquish their hold on those areas of the continental shelf outside the proposed 200-mile limit, his delegation would support any proposal aimed at the establishment of an equitable system of revenue-sharing to ensure that the international community obtained some benefit from the exploitation of what would otherwise have fallen within the international zone. Furthermore, as those States based their claims to shelves outside the 200-mile limit on the 1958 Geneva Convention, the terms of that Convention should be applied. Claims should therefore be limited to the sea-bed and subsoil thereof and should not extend to the superjacent waters which would remain part of the high seas.

66. Mr. LYSAGHT (Ireland) said that there was a certain difficulty in treating the question of the delimitation of the continental shelf between neighbouring States in isolation from the question of the régime of islands. In the sphere of continental shelf jurisdiction, two separate but interrelated questions arose with regard to any island. The first was whether it was capable of generating jurisdiction over areas of continental shelf; the second was whether it should be taken into account in dividing areas of continental shelf between neighbouring States. If it was decided that certain categories of islands could not generate jurisdiction over the adjoining continental shelf, such islands obviously could have no relevance for the division of areas of continental shelf between neighbouring States. On the other hand, it was not inconceivable that an island might be capable of generating continental shelf jurisdiction yet could not equitably be used as a base-point in making a division of the continental shelf between two neighbouring States on the basis of an equidistance line.

67. The principle of equidistance had found expression in article 6 of the 1958 Convention on the Continental Shelf, which provided for a median line solution in the absence of agreement or special circumstances. It was clearly envisaged that islands would not necessarily be taken into account as base-points for the measurements of the median line, but the article itself contained no specific provision on the subject. That omission had given rise to innumerable disputes between States, many of which were still unresolved.

68. Article 6 had been considered judicially in the North Sea Continental Shelf cases, in which the International Court of Justice had determined that the overriding principle was that division should be in accordance with equitable principles. Although that judgment had listed some factors to be taken into consideration in determining equitable principles, the Court had not had occasion to develop the concept with reference to islands. His delegation believed that some advantage might be derived from spelling out in the future convention the circumstances in which islands should be used as base-points for the delimitation between neighbouring States of the adjacent continental shelf on an equidistance basis. In that connexion, he said that his delegation was attracted by the Malta draft articles (A/9021 and Corr.1 and 3, vol. III, sect. 17) and the Romanian draft (A/CONF.62/C.2/L.18). Certainly low-tide elevations and islets outside the territorial seas off the coast should have no relevance. Moreover, his delegation would suggest that uninhabited islets, wherever situated, should not be used as base-points for an equidistance line. Generally speaking, other islands should be disregarded unless they were substantial in size in relation to the State as a whole and not removed from the low-water mark of the mainland coast by more than the breadth of the territorial sea. The onus should be on those who wanted any particular island to be used as a base-

point to show that that was in accordance with equitable principles. His delegation tended to the view that no account should be taken of straight baselines as base-points for the measurement of an equidistance line. The low-water mark of the coast was a more appropriate base-point in view of the fundamental principle, acknowledged by the 1958 Convention and by the International Court of Justice that jurisdiction over the continental shelf arose from its being an extension of the land mass.

69. He drew attention to the situation which would exist pending agreement on the division between two countries of the adjacent continental shelf. It had been clearly established that no State might acquire rights or jurisdiction over areas of continental shelf belonging to another State by occupation, whether notional or effective. Nor was a State entitled to undertake exploration or exploitation activities within areas rightfully belonging to another State without that State's express consent. It followed that, pending agreement on delimitation, no State should undertake exploration or exploitation in disputed territory. To allow it to do so would be to give it an unfair and artificial advantage in any negotiations. His delegation had read with interest the Netherlands draft article (A/CONF.62/C.2/L.14) with its provision for conciliation procedures and for an interim position pending the conclusion of an agreement. However, it could not agree that an equidistance line on the single basis suggested in that article would be a satisfactory interim solution. Ideally no exploration or exploitation activities should take place in areas which were the subject of a *bona fide* dispute between neighbouring States. Accordingly, his delegation would propose the inclusion of a provision that, pending agreement on the delimitation of the continental shelf, no State should be entitled to carry on such activities beyond any equidistance line measured in accordance with the convention. At the least, that would be a powerful spur to agreement. Any State which denied that an equidistance line was equitable in its particular circumstances should be given an immediate right of recourse to conciliation procedure to determine if its contention was tenable.

70. His delegation was considering the preparation of a draft article on the subject and would welcome informal consultations with other interested delegations before submitting it.

71. Mr. FILIPPI (Chile) said that the working paper in document A/CONF.62/L.4, of which his delegation was a sponsor, defined the continental shelf on the basis of both legal and geomorphological criteria, namely the 200-mile limit and the natural prolongation of the land mass. That would take account of the exploitability criterion, which formed part of international customary law, and the corresponding acquired rights.

72. His delegation suggested that the draft articles in that working paper, with some further details concerning the geomorphological aspect, should be reflected in the document to be prepared by the officers of the Committee.

73. Mr. SOBARZO (Mexico) said that legal redefinition of the continental shelf was undoubtedly one of the fundamental concerns of the new law of the sea. The definition accepted in the 1958 Convention, which recognized the criterion of exploitability, had certain disadvantages that had actually begun to emerge during the work of the International Law Commission in the early 1950s. Although in 1951 the outer limit of the continental shelf had been accepted as being the limit determined by exploitability, in 1953 that criterion had been replaced by the criterion of the 200-metre isobath. Following the conclusions reached by the Inter-American Specialized Conference on Conservation of Natural Resources, the Continental Shelf and Marine Waters held in the Dominican Republic in 1956, the Commission had in the end combined both definitions. The 200-metre limit had been retained but the possibility of extending it when exploitation of the sea-bed and subsoil proved feasible at greater depths had been left open. That had been considered by some to have the additional advantage that

it would not encourage the coastal State to regard the zone to a depth of 200 metres as a clearly defined one in which it could exercise rights of sovereignty other than those required for exploration and exploitation of its natural resources.

74. Despite its disadvantages, however, the criterion of exploitability had been accepted at Geneva. Differences had soon arisen about the interpretation of the definition contained in article I of the 1958 Convention. The broad interpretation, according to which the continental shelf might be extended indefinitely as technical progress rendered operations at ever greater depths possible, subject only to the rights of opposite States, was the least satisfactory. If that interpretation were to be accepted, the great oceanic basins would be transformed into continental shelves of coastal States, with results which would be grossly unlawful, for they would deprive the land-locked countries of any participation in exploitation of sea-bed and subsoil resources. Clearly the concept of the common heritage of mankind and the moratorium approved by the General Assembly in resolution 2574 D (XXIV) had spelt the end of that interpretation. However, the 1958 Convention was the only multilateral instrument on the subject which had yet been concluded, and the appropriate interpretation of the article in question continued to be a problem of great importance. Although the Convention had been ratified by only a few countries, article I had been adopted by a very large majority, and it should be remembered that failure to ratify an instrument did not necessarily signify that a country was actually opposed to it.

75. To interpret the Geneva Convention correctly, it was vital to take into account the relationship between the submerged areas and the continent. The geological unity of the two zones was an aspect which seemed to be entirely ignored by the broad interpretation, on the one hand, and arbitrarily underestimated by the interpretation which would set too narrow a limit to the continental shelf, on the other.

76. That geological unity was a geographical fact which applied not only to the shelf but also to the other submerged areas between the coast and the oceanic basin, such as the continental slope and rise, as was proved not only by geomorphology but also by the structure of the subsoil.

77. The International Court of Justice had stated, in its judgment concerning the North Sea, that the determining factor in recognizing a coastal State's entitlement *ipso jure* to the continental shelf was whether the submerged area in question could be considered as constituting in fact a part of its territory and that, although covered by water, it constituted a prolongation thereof.

78. Geological formations and the fluids they contained were not delimited by coastlines, but were prolonged beneath the sea. Sometimes resources in submarine areas were richer than in the coastal strip, and their profitable exploitation was becoming increasingly generalized. Coastal States must safeguard them in the interests of their peoples. That concept had been expressed at the 45th plenary meeting by the President of Mexico when he had stated that the rights of a coastal State should extend either to the outer limit of the continental rise or to a distance of 200 miles from the coast, as it saw fit to determine. The same thesis was propounded in document A/CONF.62/L.4, of which Mexico was a sponsor.

79. Adoption of the outer limit of the continental rise as the limit to the continental shelf, as advocated by Mexico, would preserve geological unity and overcome the disadvantages of the definition contained in the 1958 Convention.

80. Mr. MAIGA (Mali) said with reference to the Truman Proclamation of 1945 that it must be asked why there had been no reaction, particularly from land-locked States, and no protest from the international community. The answer was that the Proclamation had been made in the aftermath of the Second World War when the exploitation of a new source of

minerals corresponded to the interests of both individual States and the international community.

81. As to the legal concept of the continental shelf, the 200-metre depth criterion alone would have given rise to an extremely inequitable situation inasmuch as some States had a very wide shelf while others had a very narrow one. A new criterion had accordingly been embodied in the 1958 Geneva Convention, namely that of exploitability. That criterion, however, lacked the element of certainty that a law must have. In fact, it was quite useless as it stood.

82. As a result, the current concept of the continental shelf did not meet the two essential objectives, namely the freedom of the high seas and access to the sea's resources by the disadvantaged and land-locked States. Furthermore, the definition set forth in the Convention had given rise to unending controversy.

83. For the foregoing reasons, his delegation took the view that the establishment of an economic zone situated beyond the territorial sea and adjacent to it, where the economic and social interests of all States, both coastal and land-locked, would be safeguarded, should replace the concept of the continental shelf. While the concept of the exclusive economic zone was aimed at improving the standard of living of all peoples through the orderly and rational exploitation of the resources of the sea, the concept of the continental shelf favoured certain economically powerful States.

84. Mr. VARVESI (Italy) said that the problem of the continental shelf was a very delicate one, for a number of reasons.

85. First, the very concept of the continental shelf, despite having been incorporated in the positive legislation of a large number of States, including Italy, was far from being well-defined. While the concept had been justified by geological considerations and legitimate economic interests, the rules set forth in the 1958 Geneva Convention were anything but precise.

86. Secondly, the question was being considered in the light of the proposal for an exclusive economic zone—a concept that had been unknown in 1958. Whether the concept of the continental shelf would be replaced by that of the economic zone depended on the decisions to be taken in connexion with the latter. However, it was clear that coastal States would continue to have preferential and exclusive rights over the sea-bed and subsoil beyond the territorial sea, in a zone that had been termed the coastal zone of the sea-bed. As to the outer limit of that zone, neither the depth nor the exploitability criterion would provide an equitable solution for all coastal States; on the contrary, such a means of delimiting the zone would tend to crystallize profound differences among individual States.

87. Consequently, a clear, logical solution should be sought on the basis of distance from the coast, in order, on the one hand, to provide the coastal States with a zone wide enough to satisfy their economic needs and, on the other, to ensure the viability of the international zone that would constitute the common heritage of mankind. Any undue extension of the coastal zone beyond a distance of 200 miles would create an unbalanced situation that would negate the significance of the international zone.

88. It was therefore to be hoped that in the exploitation of the sea-bed resources of coastal States it would be possible to reach an objective solution acceptable to all. Such a solution alone would justify the present Conference.

89. As to the question of the delimitation of the coastal zone of the sea-bed between adjacent or opposite States beyond the 12-mile territorial sea, his delegation was convinced that the delimitation criteria embodied in the 1958 Geneva Convention remained valid. Delimitation should accordingly be determined by agreement between the parties or, in the absence of agreement or of special circumstances, by means of the median line. That principle should be accompanied by an undertaking

to submit to compulsory settlement machinery any dispute that might arise in that field.

90. Mr. ROBINSON (Jamaica) said that two divergent views were emerging from the debate on the continental shelf, namely, support for the jurisdiction of the coastal State over a shelf extending to the outer edge of the continental margin bordering on the abyssal plains, and support for coastal State jurisdiction up to 200 miles, whether or not the shelf fell short of, or extended beyond that point. The Committee had become polarized between those two views at a time when there was an urgent need to reconcile them in order to reach agreement. One of the obstacles to agreement was that delegations had permitted their views to become fixed too soon, thereby depriving themselves of the necessary flexibility.

91. In his delegation's view, there should be a cut-off point at 200 miles from the coast. Such an approach had the merits of simplicity and precision. Furthermore, it would facilitate a more equitable sharing of the resources of the seas among the peoples of the world, particularly having regard to the needs of the developing countries. It would be more consistent with the principle of the common heritage of mankind than would a system that would grant the coastal States jurisdiction, sovereign rights or even sovereignty over a shelf extending to the outer edge of the continental margin.

92. Many delegations felt that the principle of the common heritage of mankind, by virtue of general recognition, had become part of customary international law. That principle must accordingly be transformed into a working reality.

93. As pointed out by the representative of Singapore, the report of the Secretary-General on the economic significance of the various limits proposed for national jurisdiction⁵ indicated that a claim of coastal State jurisdiction up to the 3,000-metre isobath—which coincided approximately with the outer edge of the continental margin—would leave only 7 per cent of the off-shore mineral resources to the international zone. Was that the best endowment that could be offered the international community? If so, it was questionable whether the International Sea-Bed Authority would be economically viable. The representative of UNCTAD, speaking at the 6th meeting of the First Committee, had expressed doubts about the feasibility of an Authority having such a sparse endowment. However, insufficient attention had been paid to that view.

94. As to the delimitation of the continental shelf, many delegations had stressed that a shelf extending to the outer limits of the continental margin closely followed the geographical features of the shelf. That proposition was an attractive one. However, there was a need to choose between a simplistic geomorphological definition, which could not correct the accidents of geography, and a legal definition inspired by the need to ensure an equitable distribution of the resources of the sea. His delegation preferred the latter definition.

95. In justifying the claim that the shelf extended to the outer limits of the continental margin, great reliance had been placed on the views expressed by the International Court of Justice with regard to the North Sea continental shelf to the effect that the rights of the coastal State in respect of the area of the continental shelf constituting a natural prolongation of its land territory into and under the sea existed *ipso facto* and *ab initio*, by virtue of its sovereignty over the land. He hesitated to accept that approach, however, since the Court had not been dealing with the specific question of the status of the continental shelf in the context of a coastal State's proprietary or other interest in it, but rather with the delimitation of the continental shelf between adjacent coasts. In other words, the Court had not found it necessary to resolve the issue of the status of the shelf in order to resolve the particular question before it, namely, delimitation. It was therefore doubtful whether that case could be cited as justifying the argument that a coastal State had

⁵ Document A/AC.138/87 and Corr.1 of 4 June 1973.

sovereign rights over the full extent of the natural prolongation of its land territory into the sea.

96. Many delegations had referred to the preservation of the rights acquired, either under conventional or customary international law, over the continental shelf. Yet if acquired rights in respect of the continental shelf were to be upheld, why should they not also be upheld in the case of other areas—for example, the right of States possessing distant-water fleets to exploit areas far removed from their coasts? While due regard must be paid to the rights of States under current international law, legislation would be inhibited by an excessive concern for those rights. A new law of the sea must be formulated having regard not only to the current legal order, but also to the principle of equity.

97. He suggested that a compromise between the two views might be found in conceding the jurisdiction of the coastal State over that part of the continental shelf that constituted the natural prolongation of its land territory, but agreeing that the benefits derived from exploitation beyond 200 miles should be shared with the international community. That formula would not involve mixed ownership of the shelf or mixed jurisdiction over it; it would simply require that a contribution should be made out of the income derived from exploitation beyond 200 miles in favour of the international community. Such contributions should be on a *pro rata* basis, depending on the stage of economic development of the coastal State. Thus, developing countries would not be called on to contribute in the same proportion as the developed countries. Similar proposals, on an informal basis, had been made by a number of delegations.

98. Only such a formula would ensure that the hopes of the international community, particularly the developing countries, for an equitable distribution of sea-bed resources would not founder.

99. Mr. ILLUECA (Panama) said his delegation had noted that considerable confusion existed regarding the concept of the continental shelf. In its opinion the originally accepted meaning had been geomorphological: the extension below sea level of the continental structure of the emerged coasts. Several scientists asserted that the shelf had originally been linked to the emerged surfaces of the coastal State, having been created by the same tectonic and isostatic movements which had formed the continents, and shaped by erosion and accumulation of emerged terrestrial materials, or had been a coastal plain submerged by the encroachment of the sea and was therefore a definite continuation of the territory of the coastal State. It took the form of a physical and tangible structural whole whose lower end was the meeting point of the continental slope and the abyssal plains and deeps. That unit, formed by the gently sloping underwater area adjacent to the coasts, and by the abruptly steepening incline of the slope, was what geographers called a "continental sill" and was more popularly known as the "continental shelf".

100. In his delegation's view the régime applicable was that of sovereignty for purposes of exploitation, exploration and the conservation of renewable and non-renewable resources, including scientific research and the necessary security measures to safeguard the continental shelf and the coastal State.

101. The breadth of the continental shelf varied according to the action of the forces of nature. In some cases the shelf was wider, in others narrower, and in extreme cases almost non-existent. Many coastal States had tried to establish an "artificial" continental shelf for exploration and exploitation of resources over a larger area of the sea-bed and subsoil adjacent to their coasts, but outside their national jurisdiction. His delegation thought that the claims made by many disadvantaged States were quite justified, but it was equally true that a name more consonant with geographical realities must be found for that submerged portion of the earth's surface. Why not call

that portion of the earth's surface composed of abyssal deeps and plains the "national sea-bed"? Why should it not be possible to establish a régime adapted to the new realities? The existing confusion hampered the work of the Committee, and the use of inadequate or even contradictory technical terms solved none of its problems. More courage and imagination should be shown in seeking new approaches which recognized objective realities. As a supplement to an insufficiently broad natural continental shelf, legal experts and statesmen should be able to establish a "national sea-bed" under a régime which took account of the physical inequalities of the subject of the law and the economic and social needs of the coastal State.

102. His delegation had no objection to the delimitation of such a "national sea-bed", provided it did not exceed 200 nautical miles measured from the baseline. That limit was in keeping with the criterion of the maximum delimitation of sea space under the national jurisdiction of a coastal State, for which there had been a wide measure of support at the Caracas meetings. His delegation realized that the delimitation of the "national sea-bed" must be based on strictly agreed criteria as to the rights claimed to the natural continental shelf. However, it would not regard the criteria of depth and exploitability as acceptable for the delimitation of the "national sea-bed": the former because many delegations did not regard the criterion as being an objective and uniform limit; the latter because it was a criterion which lent itself to arbitrary conduct by the technologically advanced powers.

103. His delegation attached importance to the item on the continental shelf. The Republic of Panama had claimed and was claiming the exercise of its sovereign rights over the continental shelf of the Isthmus of Panama throughout its national territory, beneath the waters of both the Pacific and the Caribbean. His delegation had come to Caracas in a constructive spirit and would continue to contribute to the work of the Committee.

104. Mr. BELLIZZI (Malta) said that although his country adhered to the 1958 Convention on the Continental Shelf, it considered that the concept of the continental shelf should be absorbed in the new concept of the exclusive economic zone. The delegation of Malta was in favour of establishing a uniform maximum limit of 200 nautical miles for all purposes for maritime areas under national jurisdiction. The advantages of that limit would be its precision, universality, uniformity and equity—qualities which were not implicit in the criteria of exploitability and of so-called natural prolongation. Of course, within the limit of 200 miles the coastal State would have, *inter alia*, all the rights over the continental shelf provided for by the Geneva Convention. Allowing the coastal State to extend its jurisdiction beyond the 200 nautical miles would make a mockery of the principle of the common heritage of mankind which had been introduced by the delegation of Malta in the United Nations General Assembly.⁶

105. With regard to the delimitation of the continental shelf between adjacent and opposite States, he pointed out that the judgment of the International Court of Justice in the North Sea Continental Shelf cases referred exclusively to the question of delimitation between adjacent States, and did not affect the validity of the median line principle, where it was a question of delimiting the continental shelf between opposite States. Some of the proposals presented had as their object the weakening or outright removal of that principle, since it did not meet the particular needs in a limited number of situations. In that connexion, it would be extremely difficult for the delegation of Malta to support proposals on the lines referred to. In the view of his delegation, the principle of the median line constituted an old-established rule of international law, especially as between opposite States, and should be embodied in

⁶See *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 92, document A/6695.

any new convention that the Conference might approve. The importance that many delegations attached to the principle of equidistance or of the median line was demonstrated by the fact that no less than six proposals before the Committee (A/CONF.62/C.2/L.3, 14, 22 and 25-27) gave adequate expression to that view. Malta, for its part, also recognized mutual respect for sovereignty and territorial integrity, equality and reciprocity.

106. The delegation of Malta reserved the right to intervene again on questions of delimitation in the context of other items on the agenda.

107. Mr. DJALAL (Indonesia) said that according to existing international law the coastal State had sovereign rights over the continental shelf to the depth of the 200-metre isobath and beyond that to the distance of exploitability. Accordingly, his delegation did not think it would be feasible or realistic to define the continental shelf only up to the depth of the 200-metre isobath, because many countries, in exercising in good faith their sovereign rights under existing international law, had already defined the shelf beyond the 200-metre isobath and had concluded numerous agreements with their neighbours on the delimitation of the continental shelf. It would be impossible to deprive them of what they considered their sovereign rights under international law. The task of the Conference must be to define how far beyond the 200-metre isobath the exploitability criterion should apply.

108. In his delegation's view, the limit of the continental shelf should be fixed at some point between the 200-metre isobath and the outer edge of the continental margin.

109. Nowhere did the Indonesian continental platform extend beyond 200 miles.

110. A relationship must be established between the economic zone and the continental shelf, a choice being made between the following possibilities. First, the régime of the continental shelf should continue to be applied to the sea-bed area, which, under the definition to be adopted in the future, would fall within the limits of the shelf, whether the shelf was narrower or broader than the economic zone of 200 miles. The régime of the economic zone should be applied to the sea-bed area beyond the continental shelf if the shelf was less than 200 miles wide. Secondly, the coastal State could apply the régime of the continental shelf to the whole of the economic zone, i.e., up to 200 miles, if it so wished. Thirdly, it could apply the régime of the economic zone to that sea-bed area. His delegation preferred the first possibility, thus combining the concepts of the economic zone and the continental shelf.

111. Referring to document A/CONF.62/L.4, of which his country was a sponsor, he said that it was designed to harmonize the different trends which appeared in the various texts.

112. He wished to emphasize the distinct nature of the concept of an archipelagic State and that of an archipelago forming part of a coastal State. That distinction was clearly

indicated in the working paper in document A/CONF.62/L.4, which dealt with the two questions in different chapters. His country supported the concept of the economic zone, which was also dealt with in the working paper. Another issue closely related to the concept of the exclusive economic zone was that of the special rights of the land-locked and geographically disadvantaged countries. The sponsors of the working paper recognized the existence of those rights.

113. There were many other important problems before the Conference which had not been dealt with in the working paper. That did not mean that they were insignificant, but that the working paper was merely a starting point from which agreement or agreements might be reached on all the topics of the Conference.

114. Mr. ROE (Republic of Korea), speaking in exercise of the right of reply, said that the representative of North Korea had, in the course of his intervention, once more made irrelevant and groundless political statements concerning its continental shelf. He could not resist a feeling of indignation, as he could not understand the motive behind so much repetition.

115. In its general statement at the 26th plenary meeting the delegation of the Republic of Korea had exposed the fallacious allegations made by North Korea, which had again been repeated here.

116. They were unworthy of comment, but as a developing country which was becoming industrialized the Republic of Korea was in great need of oil, the import of which was an excessive burden on the nation. Consequently, a start had been made towards exploring the continental shelf, and licences had been granted to foreign companies to prospect for oil. Moreover, the area of the continental shelf was one in which there were concurrent claims of jurisdiction, but these had already found a practical and reasonable solution.

117. The representative of North Korea had claimed that half of Korea was occupied. He in turn wondered to what part of the country that referred; perhaps it was to the northern part, which had been taken over in 1945 and placed under the control of a few irresponsible people.

118. The Republic of Korea urged North Korea to use common sense and not to make irrelevant and provocative statements.

119. Mr. KIM (Democratic People's Republic of Korea), exercising the right of reply, said that the statement just made by the representative of South Korea revealed who the people were who had sold the maritime resources of the country, contrary to the interests of the nation.

120. The Democratic People's Republic of Korea advised the authorities of South Korea to listen to the voices of resistance of the people of South Korea, which was a victim of the so-called "agreement" and did not commit acts of treason in order to earn a few dollars, but was following the movement towards independence.

The meeting rose at 6.40 p.m.

21st meeting

Wednesday, 31 July 1974, at 12.45 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Exclusive economic zone beyond the territorial sea

[Agenda item 6]

1. Mr. TEMPLETON (New Zealand) said that his country had for some years firmly supported the economic zone concept, and at the Conference had been among the sponsors of working paper A/CONF.62/L.4, whose pivotal feature was the 200-mile economic zone. The very wide support given to that concept during the Conference clearly assured it of a place in the new convention on the law of the sea. It now remained to find the exact method of safeguarding legitimate competing interests with regard to the zone.
2. New Zealand's support for the economic zone concept was motivated by the same special concern as had been expressed by the South Pacific island States. Such countries looked increasingly to the surrounding ocean as a necessary supplement to their slender land resources, and there was little if any possibility of harming neighbouring countries in view of the remoteness of the island countries of the South Pacific. While the fishing interests of other countries might be affected, the will existed to find a way of dealing with that situation.
3. New Zealand had a relatively generous under-water extension of the land mass, in which there had already been one discovery of natural gas deposits. In view of New Zealand's extreme distance from the great oil-producing regions of the world, the existence of sources of hydrocarbons in the area was of the greatest importance to its young and growing community; the establishment of an economic zone of the kind that was emerging in the Conference would enable New Zealand to protect that interest, as well as to safeguard the vulnerable fish resources of the region from large distant-water fishing fleets. A co-operative zonal régime was needed which would offer more discipline than the traditional freedoms of the high seas.
4. The suggestion had been advanced in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, and repeated by one delegate in a plenary meeting, to the effect that there should be a restriction on the ocean space and, in particular, on the economic zone of islands. The New Zealand delegation assumed that such a suggestion had been made for the most part, in the context of the special delimitation problems affecting islands in enclosed or semi-enclosed seas. If, however, a broader principle had been intended, his delegation had the strongest objection to it. The application of such a principle would doubly penalize the island countries of the Pacific, already inhibited by geographical remoteness and suffering difficulties with resources and marketing, by withdrawing from them the benefits of a proper economic zone. His delegation was also sure that most delegations had serious misgivings about the thought of varying the attributes of State sovereignty with regard either to the territorial sea or the economic zone according to a calculation of the size of a State, its population or other factors. No such discrimination was envisaged in existing international law as contained in the 1958 Geneva Conventions.
5. New Zealand, with other States, had sponsored a set of draft articles contained in document A/CONF.62/C.2/L.30 which preserved the entitlement of island States and islands generally to the same territorial sea and economic zone to be fixed for other land territory. It was essential that no doubt should be cast on the principle of equitable treatment of all types of land territory.
6. No solution ensuring the general acceptance of the economic zone would come from the Conference unless each delegation aimed at a reconciliation of all major viewpoints, whether or not they affected its own circumstances. With regard to the concept of the economic zone, there were four major areas where compromise seemed possible.
7. First and foremost, the interests of the land-locked and shelf-locked countries, especially those with developing status, deserved most serious consideration in relation to economic zones. While not every aspect of that group's wishes could conveniently be met, New Zealand and the other sponsors of working paper A/CONF.62/L.4 had committed themselves to producing draft articles recognizing the requirement for equitable rights of access by disadvantaged developing States to the living resources of the economic zones of neighbouring countries.
8. Secondly, there was a wide divergence of interests and viewpoints in regard to the areas of continental margin which lay beyond the 200-mile economic zone. New Zealand had a very large continental margin, much of which was already under licence to companies to search for and to exploit natural gas, oil and other mineral resources. In the view of the New Zealand delegation, the existing law set out in the 1958 Geneva Convention on the Continental Shelf¹ and confirmed by the International Court of Justice,² and the practice of States, granted a coastal State sovereign rights over sea-bed resources throughout the natural prolongation of its land territory, that is, over the whole of the margin. In view of New Zealand's remoteness and isolation in the vast ocean, it was not unreasonable to ask that the new law of the sea confirm the existing rights of the coastal State to its continental margin. New Zealand would, however, look with sympathetic interest at any concrete proposals that might be put forward for the accommodation of the interests of States not in that position.
9. Thirdly, the needs of distant-water fishing countries and of other States interested in fishing in the economic zones of a particular region should be taken into account, and New Zealand was ready to offer concessions in that regard as was evident from the notes in working paper A/CONF.62/L.4. The joint Australian-New Zealand fisheries paper submitted to the sea-bed Committee in 1972³ would also provide a general régime for fisheries in economic zones under which that portion of the allowable catch not taken by the coastal State would be available for the fishing vessels of third countries. The sponsors were revising that paper into draft articles for possible presentation under the item on fisheries. Most of the major distant-water fishing countries now seemed willing to come to terms with the idea of the 200-mile zone in which fish stocks would be managed, conserved and harvested by the coastal State. Similarly, most coastal States also seemed willing now to accept the obligation to allow fishermen from other countries to enter the 200-mile zone on reasonable terms and conditions to take the balance of the allowable catch not harvested by the local industry.
10. Fourthly, agreement on the economic zone would not be possible unless adequate provision was made to ensure that, as

¹ United Nations, *Treaty Series*, vol. 499, p. 312.

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

³ Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 and corrigendum, annex III, sect. 9.

envisaged in the Declaration of the Organization of African Unity adopted at Addis Ababa in 1973 and at Mogadiscio in 1974 (A/CONF.62/33), the rights to an economic zone would not be used for the exploitation of those territories still remaining under colonial or foreign domination. Not much progress had been made so far in translating that worth-while idea into exact treaty language. It was, of course, difficult to do so without running the risk of affecting the rights of territories which did not in fact fall into the particular category in question. A formula could be found, however, to ensure that, in respect of a territory which had neither full independence nor some other self-governing status, achieved after an act of self-determination under the auspices of the United Nations, the

rights to the resources of an economic zone created in respect of that territory and to its continental shelf were vested in the inhabitants of the territory, to be exercised by them for their benefit and in accordance with their needs and requirements. It should also be made clear that such rights could not be exercised, profited from or in any way infringed by a metropolitan or foreign power administering or occupying such a territory. The New Zealand delegation, together with Fiji, Tonga, and Western Samoa, had accordingly submitted a draft article on that subject in document A/CONF.62/C.2/L.30, which might best be considered under agenda item 19, on the régime of islands.

The meeting rose at 1.00 p.m.

22nd meeting

Wednesday, 31 July 1974, at 3.10 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Continental shelf (*concluded*)*

[*Agenda item 5*]

1. Mr. AL-NIMER (Bahrain) outlined the historical background of the concept of the continental shelf. In particular, he referred to the text of the draft articles adopted by the International Law Commission in 1956¹ which had laid the ground for the definition of continental shelf areas subject to the control and jurisdiction of coastal States contained in article 1 of the 1958 Geneva Convention on the Continental Shelf,² and subsequently confirmed by the judgment of the International Court of Justice on the North Sea cases.³ In a Government proclamation of 5 June 1949, his country had declared that the sea-bed and subsoil beneath the high seas contiguous to its territorial waters, and extending seaward to boundaries which had subsequently been agreed with neighbouring States, belonged to Bahrain and were subject to its absolute jurisdiction and authority. The proclamation expressly provided that the high seas character of the superjacent waters outside the territorial belt and the fishing and other traditional rights in such waters would not be affected.

2. His delegation supported retention of the doctrine of the continental shelf and the exercise of the rights specified therein, as defined in bilateral agreements or in accordance with the principles laid down in the 1958 Geneva Convention. The doctrine of the economic zone, if eventually adopted, should not affect continental shelf rights since it was a subsequent formulation of additional coastal State rights over the living resources of superjacent waters. The application of the economic zone doctrine in geographically disadvantaged areas and semi-enclosed seas would lead to difficulties of distribution which could probably be settled only by regional agreements based on equitable principles.

Exclusive economic zone beyond the territorial sea (*continued*)

[*Agenda item 6*]

3. Mr. HERRERA CACERES (Honduras) said that his country claimed inherent rights over the resources in its adjacent zones and had established control over hunting, fishing and other exploitation in those waters. Foreign States had no

competence in those zones except on the basis of agreement with the coastal State. His country maintained the principle that the outer limit of the territorial sea had never constituted a limit on the inherent right of States over their resources. Free and unimpeded activities in the adjacent zones were a conventional rather than a customary freedom, which was binding only on States parties to a treaty relating to those zones.

4. Honduras was not a party to any treaty which would have limited its rights over the resources of its adjacent zone. It was prepared to negotiate on the understanding that any limit it accepted in connexion with that zone would be a freely conceded restriction on its rights and not a concession enjoyed by a group of States that took advantage of a conventional freedom to fish in order to plunder the seas. His delegation considered that the resources of the sea-bed and ocean floor and those of the superjacent waters should be covered by the same régime, without prejudice to the competence of the coastal State with regard to the continental shelf and the regulation of high seas fishing.

5. The concept of a contiguous zone should disappear on establishment of an exclusive economic zone beyond the territorial sea, except in the case of States with a territorial sea of less than 12 miles. However, his delegation strongly disagreed with the view that the disappearance of the concept of the contiguous zone entailed the disappearance of certain traditionally related competences which were complementary to the competence of States in the economic zone. The economic zone and the contiguous zone coincided in the sense that they were subject to the functional competences of the coastal State. In the economic zone those functions related to resources, while in the contiguous zone they related to customs, fiscal, sanitation and immigration police. Some of those functions should be redefined in the light of the rights to be protected in the exclusive economic zone and should be integrated in the sovereign competence of the coastal State as regards fisheries control, protection of the marine environment, control of scientific research and national security.

6. For practical purposes, competence on sanitation matters need not be taken into account in the exclusive economic zone. However, it was necessary to define the scope of the security measures which a State might adopt. The issue had been discussed at other conferences and should be defined in the convention being negotiated, particularly with regard to protection of the coastal State from threats to its inherent rights over resources. Provisions should be included to ensure that free-

*Resumed from the 20th meeting.

¹ *Official Records of the General Assembly, Eleventh Session, Supplement No. 9, para. 33.*

² *United Nations, Treaty Series*, vol. 499, p. 312.

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

doms recognized in the zone would be subject to the limitations resulting from exercise by the coastal State of those rights in a zone of 188 nautical miles from the outer edge of a territorial sea of 12 nautical miles. There should be close collaboration with the relevant international agencies with regard to measures to be adopted by the coastal State in that respect.

7. His delegation considered that the economic zone should be regarded as a zone of functional competences in which the coastal State, by virtue of its sovereign rights over the resources therein, would also exercise legislative and judicial competence to prevent infringements of those rights.

8. That would involve a redefinition of the concept of "hot pursuit", since the establishment of zones of functional competence would entail the limitation of high seas areas and consequently of areas where that right was traditionally exercised. Its continued exercise in those areas should be regulated in regional, subregional or bilateral agreements. Freedom of navigation, overflight, and of the laying of submarine cables and pipelines should be maintained in the zone of functional competence, taking into account the rights of the coastal States over the resources therein. International machinery should be set up to settle disputes arising from abuse of rights or freedoms in that marine area. A functional approach to all the competences deriving from the inherent rights of the coastal State over its resources could be a basis for reconciling the concepts of a territorial sea of 200 miles and an economic zone or patrimonial sea of the same breadth.

9. His delegation was studying the draft articles on the economic zone contained in documents A/CONF.62/C.2/L.21 and A/CONF.62/L.4. In general terms it agreed with the philosophy of both documents, although the Nigerian formulation, in the first document, was more in line with his country's point of view.

10. Mr. OGUNDERE (Nigeria) introduced his country's draft articles on the exclusive economic zone (A/CONF.62/C.2/L.21), which sought to achieve an equitable balance between the rights and duties of the coastal States and other States.

11. His delegation had given careful study to all the proposals and draft articles submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, in particular those contained in annex III, section 11 of the Committee's report for 1972,⁴ and in volume III, sections 16, 24, 25, 26 and 28 of its report for 1973 (A/9021 and Corr.1 and 3), as well as to the nine-Power working paper sponsored by Canada and others and contained in document A/CONF.62/L.4.

12. Turning to document A/CONF.62/C.2/L.21 he said that, in the view of his delegation, the 200-nautical-mile limit to the exclusive economic zone stipulated in article 1, paragraph 1, reflected the consensus formula on that issue. Provisions for the delimitation of the exclusive economic zone between adjoining or opposite States had not been included because the principles which applied to the delimitation of the territorial sea between such States were applicable in that regard *mutatis mutandis*, and the principles of law with regard to the delimitation of the territorial sea were still being negotiated.

13. In paragraph 2 (a) of article 1, provision had been made for the coastal State's "exclusive right" to explore and exploit the renewable living resource of the sea and the sea-bed. Some delegations might have preferred the term "sovereign rights", but his delegation considered that the concept of "sovereign rights" was inappropriate to cover fish which might move from the territorial sea of one State to another or to the high seas within a single day.

14. Paragraph 2 (b) of the article provided that the coastal State exercised sovereign rights for the purpose of exploring and exploiting the non-renewable resources of the continental shelf, the sea-bed and the subsoil thereof. Paragraph 2 (c) called for the coastal State's exclusive jurisdiction for the purpose of control, regulation and preservation of the marine environment, whereas paragraph 2 (d) provided for the coastal State's exclusive jurisdiction over ancillary matters such as the prevention and punishment of infringements of its customs, fiscal, immigration and sanitation regulations. Finally, paragraph 2 (e) provided for the coastal State's exclusive jurisdiction over the control, authorization and regulation of scientific research.

15. Article 1, paragraph 3 in which the word "artificial" should be inserted between "offshore" and "islands", provided for the coastal State's exclusive right to authorize and regulate the construction and operation of offshore artificial islands and other installations used for the exploration and exploitation of the non-renewable resources thereof.

16. The provisions of paragraph 2 of article 2 had been drafted in the light of the requirements of land-locked or geographically disadvantaged States. The word "competence" had been used but his delegation would agree to substitute the word "right" to accommodate those who had expressed preference for that word.

17. Article 3 provided that the coastal State was under obligation to use its exclusive economic zone for peaceful purposes only, and to apply therein applicable international navigational safety standards, and under obligation not to interfere with the navigation, overflight, pipeline and cable-laying freedoms of other States. Article 4 bound all other States not to interfere with the exercise by the coastal State of its rights and competences.

18. His delegation would prefer that the problem of the protection, conservation and utilization of fish resources in the economic zone be tackled comprehensively when fisheries in general were considered. However, another subparagraph might be added to paragraph 2 of article 1 reading as follows:

"In exercise of its rights of protection and conservation of the renewable living resources therein, the coastal States shall ensure that:

"(i) the maximum sustainable yield is adequately utilized either by itself or by granting exploitation licences to other States, and

"(ii) its conservation measures are formulated and executed in such a way as to take into account the recommendations of appropriate international or regional fisheries organizations."

19. His delegation had been much encouraged by the favourable response of many African, Asian, European and Latin American delegations to its draft articles and, in particular, by the support of the representative of Honduras at the current meeting.

20. Mr. LIMPO SERRA (Portugal) said that his delegation favoured the establishment of an economic zone beyond the territorial sea and extending to a maximum 200 nautical miles from baselines, in which the coastal State would have exclusive exploitation rights over all natural resources, including the resources of the sea-bed and the subsoil thereof.

21. The exclusivity of the economic zone should be confined to the exploitation of the natural resources therein, although the coastal State should have related powers, particularly with regard to pollution control. Freedom of navigation, overflight, and of the laying of submarine cables and pipelines should be maintained. His delegation would not favour allocation to the coastal State of the powers it enjoyed in the contiguous zone under the Geneva Convention, since that might interfere with freedom of navigation. His delegation might accept allocation of such powers in a zone contiguous to the territorial sea not

⁴ Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 and corrigendum.

exceeding half the breadth of that sea, that was to say, to a limit of 18 nautical miles from the baselines of the coast.

22. Delimitation of economic zones between adjacent or opposite States should be based on the median line criterion, except by agreement between those States.

23. The exclusive economic zone should have an international character, but should also have an international function; other States should be allowed to exploit excess fishery resources therein on reasonable conditions. An international commission comprising interested States might be established to assist the coastal State in the administration of the resources of the zone.

24. Mr. CASTAÑEDA (Mexico) said that his delegation had presented its general views on the economic zone to the sea-bed Committee and consequently would refer only to new proposals on the subject.

25. The draft articles in document A/CONF.62/L.4, of which his delegation was a sponsor, constituted a package solution in which the various arrangements proposed were indissolubly interrelated. For example, the proposed 12-mile limit for the territorial sea presupposed acceptance of an economic zone of 200 miles.

26. He wished to draw special attention to the differences between the régime for the territorial sea and that governing the economic zone, as spelled out in document A/CONF.62/L.4. In the territorial sea, the coastal State would exercise the same kind of sovereignty as over its land territory. In the economic zone, however, it would exercise sovereign rights over its resources but not over the zone itself, and must take into consideration the rights of other States in respect of freedom of navigation and overflight and the legitimate uses of the sea. In the economic zone it had discretionary powers over the emplacement and use of artificial islands and installations by other States.

27. There appeared to be two different schools of thought concerning the relationship between the régime for the economic zone and that for the continental shelf. According to one view, the latter should be subsumed under the former. The second view, which was reflected in document A/CONF.62/L.4, was based on the premise that the two régimes were distinct from each other and should coexist. Accordingly, draft article 19 followed the lines of the 1958 Geneva Convention and provided that the coastal State should exercise sovereign rights over the continental shelf, which should be regarded as a natural extension of its land territory. In other words, the coastal State would exercise rights over the continental shelf that would be greater in scope than those it enjoyed in the economic zone. In some cases, both régimes might apply to the same area.

28. He recalled that the representative of Kenya had stated at the 20th meeting that the definition of the outer edge of the continental shelf as the natural prolongation of the continental land territory was not part of existing law. While the exploitability criterion of the 1958 Geneva Convention on the Continental Shelf had a number of disadvantages, there were none the less grounds for maintaining that it was part of international law and that States with a continental shelf extending beyond 200 miles could hardly be expected to give up their acquired rights. Indeed, since a number of States had acquired rights under that Convention, any solution which was not based on a combination of the distance and the geomorphological criteria would be unrealistic.

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

29. Mr. GOERNER (German Democratic Republic) said that the question of the legal régime for the breadth of the economic zone was one of the most difficult issues before the Conference. The establishment of economic zones would have immediate effects on the economies of most States, and it was therefore understandable that Governments wished to examine

the consequences of the new concept before giving their consent to the results of negotiations.

30. In accordance with its basic position of lending active support to the States of Asia, Africa and Latin America for the strengthening of their political and economic independence, his country was fully sympathetic to the proposals of the developing countries favouring the establishment of an economic zone. The German Democratic Republic had a small coast with very limited resources and could establish only a very narrow economic zone. On the other hand, it depended essentially on its long-range fishing fleet to supply its population with fish products. It therefore supported the idea of a régime for the economic zone which would give due regard to the interests of both coastal and other States, particularly the geographically disadvantaged States.

31. The breadth of the economic zone should not exceed 200 nautical miles measured from the same baseline as the territorial sea. The coastal State should exercise its rights with due regard to the interests of all mankind, observing in particular the freedoms of navigation, overflight and basic scientific research and the freedom to lay cables and pipelines. The coastal State's exercise of sovereign rights over its living and mineral resources should not extend beyond an economic zone of 200 nautical miles. Concessions of the kind suggested in document A/CONF.62/L.4 would widen unjustifiably the already broad gap between geographically privileged and geographically disadvantaged States.

32. On the question of the equitable distribution of the living resources, his delegation believed that a coastal State should be obliged to guarantee fishermen of other countries access to its economic zone if it was not in a position to fish 100 per cent of the admissible catch of a species. He reminded the members of the Committee that the recent judgment of the International Court of Justice in the fisheries jurisdiction case between the United Kingdom and Iceland⁵ was based on the premise that the coastal State should pay heed to the interests of other States in the conservation and exploitation of living resources, particularly in respect of the traditional fishing rights of other States. He advocated co-operation between coastal States and the regional fishery organizations, which were highly experienced in the conservation and utilization of fish stocks and could give valuable assistance. Effective measures for the conservation and increase of the living resources in the sea were only possible if all interested States co-operated on an international scale. The coastal States should take particular notice of the recommendations of the fishery organizations on the size of catch allowed for each species and the annual quota for States entitled to fish in the zone.

33. The coastal States should enjoy sovereign rights in respect of the exploration and exploitation of the mineral resources in the economic zone. In the interest of laying down a uniform maximum breadth for the zone in which the coastal State exercised sovereign rights, it would be advisable for the future convention to stipulate that a coastal State could not extend its jurisdiction over the sea-bed beyond the economic zone of 200 nautical miles. In view of the different geological structures of the continents and oceans, it was not justifiable to consider the natural sea-bed extension of the land domain, with its various geomorphological forms, as a decisive criterion in delimiting the area of national jurisdiction.

34. Mr. IBLER (Yugoslavia) said that the new concept of the economic zone did not mean that the developed countries would be excluded from an adequate use of the sea and its resources; on the contrary, in the interdependent world of today, the establishment of the economic zone should ensure a more equitable distribution of the sea's wealth. It was especially timely that the question of the economic zone was being

⁵ *Fisheries Jurisdiction (United Kingdom v. Iceland), Merits, Judgment, I.C.J. Reports 1974, p. 3.*

considered immediately after the successful sixth special session of the United Nations General Assembly, the theme of which had also been bound up with the economic development of the third world.

35. Yugoslavia had supported the concept of an economic zone from the very beginning. It believed the Conference had now reached the stage when legal norms should be formulated. It was first of all essential to determine the breadth of the future economic zone. His delegation favoured a breadth of 200 nautical miles which would encompass the sea-bed and its subsoil as well as the superjacent water column. That would ensure the full utilization of the sea and its resources and the unimpeded development of the developing countries.

36. Coastal States should be given the exclusive right to exploit all living and non-living resources of the zone, and the exclusive right of economic benefit from non-resource uses of the sea.

37. Scientific research and exploration were closely related to the right of exploitation and must not be carried out without the explicit consent of the coastal State.

38. Coastal States should be under the obligation to take all necessary measures to protect their marine environment and exclusive economic zone from pollution, regardless of its source. In issuing regulations, coastal States should take into account maximum international standards and, in the case of especially vulnerable areas, should be entitled to prescribe more rigorous norms. There must be regional and bilateral co-operation in combating pollution.

39. In cases where the creation of an economic zone of 200 nautical miles was not possible, recourse to regional arrangements could solve the problems connected with the rights and duties of the coastal States. That arrangement should take into account the legitimate interest of all the countries concerned, particularly the land-locked and geographically disadvantaged countries.

40. The régime for the economic zone should incorporate guarantees of freedom of navigation for ships of all flags without discrimination, freedom of overflight and freedom to lay submarine cables and pipelines.

41. Mr. KAFANDO (Upper Volta) said that his country had had initial misgivings about the establishment of an economic zone, which would take away a considerable part of the international area of the high seas and place it under national jurisdiction. Nevertheless, it fully understood the motives of those who supported the concept and had reached the conclusion that the establishment of such a zone was an economic necessity. In view of its land-locked situation, however, Upper Volta could only give its approval on two conditions: first, provision must be made in a multilateral convention for access to the sea by the land-locked countries as a sacrosanct right; and secondly, the land-locked countries should be entitled to participate in the exploitation of the resources of the economic zone.

42. The régime for the zone, which would be exclusively economic in nature, must be far more flexible than that governing the territorial sea. In the economic zone, the coastal State should be guaranteed control over the resources; freedom to levy taxes or collect royalties from third States other than the land-locked countries, with which it should conclude exploitation agreements; and the right to search vessels engaged in illegal activities. On the other hand, the coastal State must assume obligations in the following areas: prevention of hazards that might impede the free passage of ships belonging to third States; navigation control; sanitary precautions; pollution control; and suppression of smuggling, particularly the smuggling of drugs.

43. The question of the right to pursue schools of fish raised various thorny problems. His delegation believed, for example, that the coastal State should not be entitled to pursue anadromous species outside the economic zone; that would make

nonsense of the common heritage of mankind principle, which was already seriously undermined by the selfish distribution of the seas by the coastal States. Rather, the coastal State should endeavour to ensure that its marine fauna remained within the limits of its national jurisdiction. Those land-locked countries whose rights were recognized in the economic zone should participate in such conservation efforts.

44. The economic zone should not extend for more than 200 nautical miles; the acceptance of such a breadth was a compromise which represented a major concession on the part of countries that wanted to retain the high seas as an international area.

45. The same limit of national jurisdiction should apply to the continental shelf. It was paradoxical that, in spite of unanimous agreement that the old law of the sea was obsolete, certain States wished to cling to the rights they had acquired under the 1958 Geneva Convention. The Conference must decide either to retain the old law of the sea and merely revise it, or to create a new one, but there could be no half-way house.

46. In any event, debate on that subject had been superseded by the adoption of General Assembly resolution 2749 (XXV) embodying the common heritage of mankind principle, under which consideration must be given to the welfare of generations as yet unborn. Upper Volta attached great importance to that principle and would oppose any attempts to diminish its import simply to pander to the greed of coastal States.

47. Mr. RANJEVA (Madagascar) said it appeared that all States participating in the Conference accepted the concept of the economic zone. However, the various statements made on the questions of the territorial sea and the continental shelf had convinced his delegation of the need for a unified approach, in view of the divergencies with regard to the rights accruing from the establishment of an economic zone.

48. For his delegation, the economic zone constituted a type of space within the national maritime zone over which the coastal State should exercise sovereign rights. The economic zone should embrace the continental shelf, the exclusive fishery zone as well as the economic activities carried out in the territorial sea; within the economic zone, the State should have the right to institute subcategories, such as the continental shelf and the fishery zone, corresponding to special legal régimes in accordance with its needs. Recalling the Declaration of the Organization of African Unity (A/CONF.62/33), he said that the legitimacy of establishing such an economic zone was not disputed.

49. That zone should lie within the national maritime zone; in other words, it should not extend beyond 200 miles from the applicable baselines.

50. The delimitation of economic zones between opposite States should, in the absence of agreement, be submitted to peaceful settlement procedures: disputes should be settled on an equitable basis, since the principle of equidistance could no longer be considered the only criterion for delimiting the zone. That principle was based on a legal fiction—the theoretical equality of States—and it should not, for example, be used for the purposes of delimitation between a developed and a developing country.

51. The same principles of equity should govern the establishment of a special régime for small islands, account being taken of their surface, population, contiguity to the principal territory, and geological structure. Sovereignty over uninhabited islands could serve only as a pretext to further the selfish interests of States, whether individual or collective.

52. In his delegation's view, the coastal State should have exclusive rights to exploit the resources lying beyond the limit of national jurisdiction, within reasonable limits of distance and depth. However, because of the international character of the zone affected, that right should be exercised only under the control of the International Sea-Bed Authority.

53. Once the economic zone had been defined spatially, it was urgent to define the economic rights and obligations of the coastal State within that zone. There appeared to be general agreement that the rights of the coastal State should not include rights of ownership over that zone. The sovereign rights of a coastal State within that maritime zone were set forth succinctly in the draft articles submitted by Nigeria (A/CONF.62/C.2/L.21); the fundamental principles aside, however, his delegation regretted the efforts made to detract from the rights of the coastal State by the introduction of contradictory elements.

54. One contradiction lay in the desire to limit that sovereignty to particular fields, by affirming that the coastal State had sovereignty and preventing it at the same time from fully exercising that sovereignty.

55. There was another contradiction in proposals to limit those sovereign rights to the economic field, since it was difficult to dissociate economic matters from other State activities. In his delegation's view, the coastal State should exercise full sovereignty within the economic zone.

56. His delegation acknowledged, however, that rules should be formulated which would define the requirements of the international community, as well as those of commerce, freedom of navigation and overflight and the laying of cables and pipelines, arrangements for which should be clearly laid down. However, such activities involved an obligation on the part of the user, since they must not in any way harm the coastal State, which would be fully justified in taking measures to protect itself.

57. On the other hand, the coastal State must conform to international law in its economic activities within its zone in respect of the preservation of species, the protection of the environment and scientific research. Only under such conditions could young States feel solidarity with the international community and be able to discharge fully their international obligations.

58. Mr. GODOY (Paraguay) said that his delegation, together with certain others, would soon formally submit draft articles on the exclusive economic zone and other items.

59. It was no coincidence that 80 per cent of the countries with a relatively low level of economic development belonged to the group of land-locked States, which included Paraguay; that fact was a direct consequence of the geographical disadvantages from which they suffered. His delegation wished to make it quite clear that the land-locked and geographically disadvantaged States were neither asking for nor would accept mere crumbs. Their requests for participation on an equal basis with the coastal States of the respective regions in the exploration and exploitation of all the natural resources of the economic zone reflected a natural and inalienable right, the full recognition of which would be the only acceptable confirmation of the recognition already expressed verbally by the vast majority of delegations.

60. Such recognition would depend entirely upon the spirit of goodwill, good neighbourliness and equity among the States of the respective regions. While the large majority of them were developing States, their potential resources, if wisely used, would enable them to overcome many of their basic difficulties in the not too distant future. It was precisely in recognition of the difficulties experienced by the developing coastal States and their legitimate right to protect the resources in their economic zone for the benefit of their peoples, that his country supported the requests of the developing States.

61. The requests of the developing land-locked States could in no way be interpreted as a threat, whether actual or potential, to the security or the development of the coastal States within the same region, much less to States in other regions. Such an interpretation could only be described as somewhat puerile and unrealistic. By the same token, his delegation firmly

rejected any allegations of collusion with the highly developed countries: the fact that their position was in certain cases similar to those of his own country was a mere coincidence.

62. In that connexion he recalled the statement he had made in the 7th meeting in connexion with the territorial sea, in which his country had dissociated itself from those Powers which, in rejecting the 200-mile territorial sea, pursued objectives harmful to the security and interests of the developing coastal States. In saying that, he wished finally to dispel any doubts with regard to the sincerity of his delegation's position.

63. As to the limit and the régime to be applied in the economic zone, his delegation maintained its position that the zone should not extend beyond 200 miles—a distance that should be coextensive with the continental shelf, namely, the sea-bed and the subsoil, together with the water column and the surface of the sea. Such uniformity would offer decisive practical and legal advantages.

64. In order to foster world trade, navigation and overflight should remain unrestricted within the economic zone, subject of course to full respect for the rules established by the coastal States in their exercise of jurisdiction over the zone.

65. Scientific research should also remain unhindered, with equal participation by the coastal and the land-locked States of the region both in the activities and the results. Such an approach would undoubtedly be of direct benefit to mankind.

66. His delegation was aware of the enormous responsibility assumed by coastal States, and by land-locked States having access to the economic zone, for the protection of marine species, preservation of the marine environment and the prudent exploitation of the non-renewable resources of their respective zones.

67. Those States had assumed the functions of trustees of international public faith, and those functions should supplement, if necessary, the duties assigned to the Authority that would administer the international zone.

68. The most equitable means of ensuring the effective participation of land-locked and geographically disadvantaged States in the exploration and exploitation of the resources of the economic zone was the establishment of joint projects, or binational or subregional enterprises, for the specific purpose of exploiting the mineral resources, the profits from which would be distributed in proportion to the contributions and needs of the States involved. The machinery and operating methods of such enterprises should be determined by mutual agreement among those States, with due regard to the relevant provisions of the convention to be adopted at the Conference, and any other relevant provisions of the various international instruments relating to the sea.

69. The implementation of the proposals which he had outlined would lead to greater integration and to sustained and harmonious development for the benefit of the peoples concerned.

70. Mr. KALONDJI TSHIKALA (Zaire), recalling the Declaration of the Organization of African Unity, section C of which concerned the exclusive economic zone, said that the zone was a new global concept which, in addition to granting rights to coastal States, gave rise to obligations on the part of both the international community and the land-locked and disadvantaged States of the region.

71. The basic principles relating to the economic zone were laid down in the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction in General Assembly resolution 2749 (XXV), which granted all States equal rights to participate in the exploitation of the sea without regard to their geographical situation.

72. The land-locked and geographically disadvantaged States should not be excluded from exploiting the living resources of

the economic zone, especially in view of the fact that the zone would cover an area that was previously high seas; coastal States should accordingly recognize the traditional rights that other States in the same region had acquired with respect to that zone. Such a principle should not, however, apply in the case of rights acquired under colonialism.

73. The economic zone must enable the coastal State to protect its resources from incursions by other States.

74. The coastal States of a region should grant preferential rights to each other in their respective economic zones. His country would not therefore subscribe to the concept of an exclusive economic zone that did not clearly guarantee the rights of the land-locked and geographically disadvantaged States to participate in exploiting the resources therein.

75. The argument put forward by many delegations that the continental shelf extended beyond the 200-mile limit caused much uncertainty as to where the shelf actually ended: a number of criteria, relating to depth, geomorphology, the natural prolongation of the territory, and so on, had been put forward. Such uncertainty gave rise to the possibility of conflict.

76. In the delimitation of the zone in the case of opposite States, his delegation supported the concept of the natural prolongation of the territory, since the principle of equidistance was often inapplicable. However, that approach could lead to untenable positions, for, if carried to the extreme, it might have the effect of giving support to the so-called "natural frontiers" theory.

77. In the same way that on land the jurisdiction of States was limited by that of neighbouring States, so in the sea their jurisdiction should be limited by the jurisdiction of neighbouring States and of the International Authority. Legal claims should be based not on power but on right, not on fact but on principle.

78. The principle of the common heritage of mankind was of great importance to his delegation. Any application of the exploitability criterion would leave for the common heritage merely those areas that were unexploitable and therefore of little value. The only criterion should be that of distance. It was logical for the limits of the continental shelf and the economic zone to coincide. Consequently, the shelf as a separate entity would disappear. Those States that claimed acquired rights over the continental shelf were doing so under the 1958 Convention that was now being reviewed.

79. However, his delegation would not object to taking account in certain cases of established situations provided it was acknowledged that national jurisdiction extended no further than the limit of the 200-mile economic zone. Account should be taken of established situations, within the framework of the international sea-bed régime, where the rights of coastal States should not be lost sight of when, *inter alia*, activities of exploration and exploitation of the zone were carried on in the area adjacent to the limits separating the two jurisdictions or when the resources of the zone overlapped the limits of national jurisdiction.

80. All questions relating to rights extending beyond the economic zone should be transmitted to the First Committee.

81. Mr. BAYONNE (Congo) said that his country supported the idea of the exclusive economic zone. The new law of the sea now being prepared would be pointless and useless unless it took account of current conditions. The aim should be a law that would be implemented because it was accepted by the whole international community. The congenital malformations of the 1958 Convention must be avoided and its ill-defined ideas replaced by properly formulated notions based on the real needs of international society.

82. Africa supported an exclusive economic zone extending no further than 200 miles from the coast. That new concept might help in redefining notions such as the continental shelf,

to the extent that it recognized the rights accorded to the coastal State under the Geneva Convention. Provision for special conditions could be discussed in the course of debate. The African countries' notion of the exclusive economic zone was a comprehensive one, embodying the rights and duties of the coastal State as well as the safeguarding of its security and economy. The zone was inseparably linked with the idea of the territorial sea in the protection of resources. His delegation had refrained from supporting the idea of a 12-mile territorial sea, since that would not help to protect the interests of a developing coastal State which had a territorial sea of 30 miles which did not cover the whole of its continental shelf and whose economic security was constantly threatened.

83. Experience and practice in the Latin American countries showed that a zone of 200 miles, under national sovereignty, would be a reasonable way of protecting the resources of a developing coastal State. His country reserved the right to extend the sea space under its sovereignty as long as there was no agreement on measures favourable to its vital interests and its economic security. His country's support for the concept of the exclusive economic zone would be meaningless if the positive substance of the idea were sacrificed to the freedom of the seas.

84. He suggested that the following principles should be observed concerning the exclusive economic zone. The developing coastal State should have permanent sovereignty over its national resources, in particular living and non-living marine resources. No State should be subjected to economic, political or other pressure to prevent the full and free exercise of its inalienable right of sovereignty. The coastal State's right to regulate and supervise all activities in the exclusive economic zone should be assured by the adoption of measures to ensure its safety and economic security, the management and rational utilization of national maritime resources, the protection of the marine environment from all forms and sources of pollution and better organization of scientific research. Such measures should also promote regional co-operation in conserving marine resources and preventing and eliminating pollution. Regional co-operation should include the right of land-locked States to participate in the exploitation of the biological resources of the economic zone on an equal footing with nationals of the coastal State, under bilateral or regional agreements. However, economic co-operation in any field should be free from any kind of association which would perpetuate existing systems under which the resources of developing countries were plundered. There should be no place for multinational companies or foreign capitalist monopolies.

85. Measures taken by the coastal State to protect the marine resources of the adjacent zone—as in the case of regional economic co-operation—should be regarded as part of the development process.

86. In addition to regional co-operation, he envisaged international co-operation. However, any intervention in the economic zone should respect the new ethic of development, in accordance with which the sea should be looked upon as a privileged area for the developing countries in their efforts to free themselves from economic domination and obtain compensation for the effects of long years of exploitation.

87. The exclusive economic zone should be used only for peaceful purposes. In that spirit the coastal State should allow freedom of navigation and overflight and the laying of cables and pipelines in the zone. He reaffirmed the land-locked countries' right to free access to and from the seas of those States.

88. Mr. JACOVIDES (Cyprus) said that, as a developing country, it supported the concept of the exclusive economic zone as expressed in the Declaration adopted at the Fourth Conference of Heads of State or Government of Non-Aligned Countries, held at Algiers from 5 to 9 September 1973, of which it was a signatory. However, its support was subject to two stipulations. The first was that in the case of narrow seas,

where the national jurisdiction—including that of the economic zone—of opposite or adjacent States overlapped, the line of delimitation, failing agreement freely concluded on the basis of equality between the States concerned, should be the median line. Secondly, islands should be in the same position as continental territories and should therefore be entitled to the same rights as other territories in respect of the exclusive economic zone. His delegation's attitude to the draft proposals would be determined accordingly.

89. The reasons for his delegation's position were set forth in its statements in the general debate at the 40th plenary meeting, and on the territorial sea and the continental shelf at the 5th and 20th meetings respectively of the Second Committee. Its arguments on the median line applied also to the exclusive economic zone.

90. Mr. BROWNE (Barbados) said that his country firmly supported the concept of the exclusive economic zone, which should include three essential elements: coastal State sovereignty over the renewable and non-renewable resources in the waters, sea-bed and subsoil; sovereign coastal State jurisdiction in preventing marine pollution and controlling marine scientific research; and clear and unequivocal provisions to meet the situation of developing disadvantaged coastal States in a region. The concept was a new legal order for the sea providing for a new and more balanced economic arrangement between developed and developing countries.

91. It might well be that negotiations would start for the specific formulation of the principles of the exclusive economic zone once the developed and maritime countries were willing to accept that the rules of the traditional freedoms of the sea as currently interpreted by them would have to give way to a new and revised régime based on political and economic justice, which would permit the developing countries to exercise sovereignty and control over national sea resources, while accepting responsibility to ensure respect and protection for the legitimate interests of the community of nations in the uses of the sea, including navigation and shipping.

92. He rejected the views of the neo-traditionalists who paid lip service to supporting the exclusive economic zone, while advocating that the coastal developing countries should not be free to decide who should exploit their living resources, what quantity should be exploited or how they should be managed. That was an indirect attempt to leave the door open for the traditional distant-water fishing nations which had enjoyed and sometimes abused the freedom of fishing in a region with which they had no geographical or economic connexion.

93. If the developed countries genuinely feared that protein supplies would be reduced because the developing coastal countries did not possess the economic and technical capacity to take and use the optimum catch from their offshore waters, they should speed up the transfer of technology under favourable conditions and recognize that the developing States had no intention of excluding fishing by other States, but wished only to ensure that such fishing was conducted under licence and under regulations consistent with State control and sovereignty and with the needs of the host country.

94. He supported the view that the coastal State should have sovereign rights for exploring and exploiting the living and non-living natural resources of the sea-bed and subsoil and the superjacent waters; and sovereign jurisdiction in respect of marine pollution in the zone of economic jurisdiction. Since, however, marine pollution was a global problem, he supported the establishment of certain minimum international standards for prevention and control of pollution. The coastal State should also have the sovereign right to authorize, control and regulate scientific research, provided authorization was not withheld unreasonably or subject to unreasonable terms.

95. While supporting the broad principles of the exclusive economic zone, he was concerned that the concept should be

formulated so as to take into account the legitimate interests of the developing countries. Certain developing, geographically disadvantaged coastal countries, including his own, would not obtain any real economic benefit from the extension of sovereignty over living resources in a wide zone and might be adversely affected by the extension of zones of sovereignty by other coastal States in the same region. The legitimate interests of those countries, namely the need for their nationals to be given access on equitable terms to the living resources of the economic zones of other States in the same region, must be accommodated in the provisions which purported to deal with the exclusive economic zone beyond the territorial sea. Without such access, countries such as his own would suffer economic malnutrition in their own exclusive economic zone. Barbados was an island country, which had a small land area with few natural resources, and a dense population to feed and support. It had a very narrow continental shelf, a negligible resident stock of fish and very few pelagic fish. The fishermen maintained themselves from coastal fisheries within a distance of about 20 miles from the coast, but more than half the national food consumption of fish and fish products had to be imported. Trawl and shrimp fishing had been developed recently in the waters of the region, which would fall within the economic zones of other States in the region if the economic zone concept were accepted in international law.

96. Any régime for the exclusive economic zone which did not contain provisions for access by developing geographically disadvantaged countries to the economic zones of other countries in the same region, on equitable terms, would only further widen the economic disparities between poor nations. Many developed and developing countries had expressed sympathy with the geographically disadvantaged countries and pledged support in principle for the inclusion of proposals for access in any convention on the law of the sea. His delegation had therefore been distressed on seeing the Nigerian proposal contained in document A/CONF.62/C.2/L.21.

97. The CHAIRMAN said that the representative of Barbados had exceeded the time-limit.

98. In response to a plea from Mr. BROWNE (Barbados) that it was his delegation's first statement and that he merely wished to propose three guidelines based on the variants contained in the report of the sea-bed Committee, the CHAIRMAN said that he was very sympathetic to the arguments of Barbados, particularly as that country had not been represented on the sea-bed Committee, but that there would be an opportunity to speak later, possible under item 10.3 concerning the special interests and needs of developing shelf-locked States and States with narrow shelves or short coastlines.

99. Mr. ACAKPO (Dahomey) said that his country had not participated in the work of the sea-bed Committee.

100. The growing acceptance of the concept of an exclusive economic zone with a maximum breadth of 200 sea miles, as supported by the Organization of African Unity and by the non-aligned States, represented progress towards the establishment of a new legal régime for the sea.

101. The coastal State should exercise full sovereignty in that zone in respect of exploitation, exploration, preservation and utilization of all natural, mineral, vegetable and animal resources; and full legal powers of control and regulation to ensure rational exploitation and preservation of the sea's resources for the benefit of the inhabitants and the economy, and to supervise scientific research with a view to preventing and combating pollution. In the interests of economic development and national security, the coastal States needed as large an economic zone as possible. Consequently, a territorial sea with a maximum breadth of 200 nautical miles, incorporating the exclusive economic zone, would seem simpler and more logical than a territorial sea of only 12 miles with an exclusive economic zone of 200 nautical miles.

102. The idea had originated in Latin America and was based on the physical and juridical unity of the zone in respect of surface, water column and resources of the sea-bed and subsoil. Extension of the territorial waters to 200 nautical miles would not affect the interests of the international community, since the coastal State would ensure the traditional freedom of navigation and overflight and laying of cables and pipelines. It would also allow its land-locked neighbouring countries the right of access to the sea, free transit under bilateral or regional agreements and freedom to exploit the biological resources of the national maritime zone.

103. The coastal State would, of course, have full jurisdiction in the event of violation of the zone, by virtue of its sovereign rights over management and exploitation of the resources.

104. The Nigerian proposal, contained in document A/CONF.62/C.2/L.21, was an acceptable compromise.

105. Mr. N'DAO (Mauritania) said that he would confine his comments to the exclusive economic zone, since his delegation had participated in the work of the sea-bed Committee. The Organization of African Unity had stressed the idea of the exclusiveness of the economic zone. The coastal State would exercise full sovereignty over the living and non-living resources, over scientific research and over the marine environment with a view to avoiding pollution. However, land-locked States would be allowed to participate in the exploitation of the living resources under bilateral or regional agreements. The legitimacy of such an arrangement had been recognized in 1958 in respect of part of the resources of the zone, namely in respect of the resources of the continental shelf, and the very Powers which now were opposing it in respect of living resources of the water column superjacent to the continental shelf had already begun to recognize those privileges for the coastal State.

106. Practice and usage had shown that the coastal State could safeguard that special interest only by exercising full sovereignty over an area of sea adjacent to its territorial sea. Certain countries asserted that they agreed to an economic zone but that the coastal State should have exclusive sovereignty over its resources only if it could exploit them itself: they based their theory on the principle that the coastal State was incapable of finding any means of rational exploitation of surplus resources and that mankind would thus be denied vital resources. He himself was confident that no person or Government would allow to perish resources that could serve the international community. His country had concluded no less than 14 international agreements for exploiting the living resources of the waters under its jurisdiction, but it intended to conduct the exploitation as a sovereign State, without restraint and choosing its partners on the basis of reciprocal interest.

107. The corollary to the concept of exercise of jurisdiction by the coastal State was that the concept of the contiguous zone should disappear from future law and the relevant privileges of the coastal State should be transferred to the exclusive economic zone.

108. To safeguard the interests of the international community, the freedom of navigation, overflight and laying of cables and pipelines should be recognized for all States in the zone provided they were exercised without prejudice to the sovereignty of the coastal State.

109. He welcomed the Nigerian proposals with great interest as they seemed to offer a sound basis for reaching speedy agreement on the legal aspects of the concept of the economic zone.

110. Mr. ROSENNE (Israel) said that a semi-enclosed sea poor in resources such as the Mediterranean did not lend itself to the kind of far-reaching claims to ocean space sometimes associated with the concept of an exclusive economic zone: furthermore, his country had vested rights in the wide oceans under the existing concept of the freedom of the high seas and under the three 1958 Geneva Conventions to which it was a party. It was, however, prepared to join with other countries in

attempting to work out some relinquishment of those rights despite the disruption which that would cause.

111. He wished to develop the ideas his delegation had first expressed at the 16th meeting of the Committee, and would do so on the basis of the propositions contained in the Nigerian draft articles. It was necessary to clarify the different economic purposes for which an exclusive economic zone beyond the territorial sea was to be recognized in favour of the coastal State. The table in the Secretariat's report on problems of acquisition and transfer of marine technology (A/CONF.62/C.2/L.3) listed no fewer than 22 different types of marine activities: some of those, such as the generation of energy, had not been mentioned in the Nigerian proposal. Clarification was necessary as to which of those activities should be recognized in the economic zone as applying exclusively to the coastal State.

112. His delegation accepted the view that the continental shelf ought to be retained as a separate concept. It was generally agreed that the coastal State enjoyed sovereign rights over the non-renewable resources of the shelf, including the sea-bed and subsoil. That idea, endorsed in the 1958 Convention on the Continental Shelf, had not been widely contested, even if some delegations considered that it could be improved in a number of important respects. However, any statement of principle containing the rather vague expression "sovereign rights" should be clarified by supplementary provisions corresponding to articles 2 and 3 of the 1958 Convention, making it clear beyond doubt that the waters above the continental shelf formed part of the high seas, and that the air space above those waters had a corresponding status. The rules on the continental shelf had to be structured in such a way as to preserve the proper balance, so laboriously worked out at Geneva in 1958, between the legitimate rights and interests of the coastal State and those of the rest of world. That same structuring should also serve as the basis for defining the much broader concept of the "exclusive economic zone", a term which he used in a purely descriptive way, following the terminology of Conference documents, without intending to read any further implication into it.

113. With regard to renewable living resources of the sea and sea-bed, the real problem facing the Conference was to find a proper balance which would enable coastal States to meet their requirements for those resources while leaving the remainder, which in most cases would be considerable, to other States. Care must be taken not to move too fast in eliminating existing activities which were based on the principle that freedom of the high seas included freedom of fishing. The extent and rate of any phasing out of such activities would have to be carefully examined. Israel recognized the position of States which were overwhelmingly dependent for their livelihood or economic development on coastal fisheries, and it also had to be kept in mind, as the International Court of Justice had pointed out in paragraph 62 of its judgment on the fisheries jurisdiction case between the Federal Republic of Germany and Iceland⁶ and in paragraph 70 of its judgment on the case between the United Kingdom and Iceland, that the concept of the preferential rights of the coastal State was not a static one.

114. His delegation doubted whether it was feasible to reach viable conclusions by approaching the question of fisheries in a piecemeal manner, or solely on the basis of discussion of the current item. The question was related to a number of other items, in both the Second and Third Committees, and all its different elements had to be adequately brought out before any agreement could be drawn up.

115. He had similar doubts about the problem of pollution control. It was particularly important to realize that no agreement on that question could be contemplated until the conclusions to be reached by the Third Committee were available.

⁶ *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Merits, Judgment, I.C.J. Reports 1974, p. 175.*

For example, article 26 of the Kenyan proposal in document A/CONF.62/C.3/L.2, granting to coastal States enforcement rights in relation to "national or adopted international regulations" against vessels "whether in their ports or in transit", not only failed to make clear what areas of ocean space those rights covered, but also caused his delegation to wonder what would be left of the concept of freedom of the high seas, and even that of innocent passage in territorial waters, if such extensive rights were granted. Similar problems were raised by article 1, paragraph 2 (c) of the Nigerian draft in document A/CONF.62/C.2/L.21.

116. With regard to article 1, paragraph 2 (d), of that draft, which covered the same ground as article 24 of the 1958 Convention on the Territorial Sea and the Contiguous Zone,⁷ his delegation had already indicated that if the idea of a contiguous zone for limited purposes was retained, it should apply only to a distance of 12 nautical miles for those States which chose not to extend their territorial sea that far. In that connexion he had noted with interest the eight-Power proposal contained in document A/CONF.62/C.2/L.27.

117. His delegation had stated its position on the question of scientific research in the economic zone at the 8th meeting of the Third Committee. It believed that freedom to carry out scientific research was an important element of the freedom of the high seas which in principle ought to be preserved in that part of the high seas which would fall within the economic zone. It accepted the position, however, that a balanced statement of law must be drawn up in which it would be stated that those carrying out the research would undertake obligations that would match the rights of the coastal State. Those obligations could include certification by the flag State that the research was to be conducted by, or under the auspices of, a duly qualified institution, that the results of the research would be made available to the coastal State in an appropriate form, and that applicable international environmental standards would be observed. To a large extent those matters were already covered by article 5, paragraph 8, of the Convention on the Continental Shelf.

118. In that connexion, he wished to recall the valuable suggestion made by the representative of Norway at the 25th plenary meeting for the establishment of a mandatory insurance pool to enable coastal States to receive compensation in cases where the traditional rules of liability proved to be inadequate. It would be useful to examine more thoroughly whether such protection could be extended to cover possible damage to the coastal State resulting from scientific research, including damage to its resources in the exclusive economic zone.

119. Although he had concentrated his remarks thus far on the Nigerian draft articles, he wished to reiterate that that document did not necessarily deal with all possible economic uses of the exclusive economic zone. Other uses should not be allowed to go by default or be left entirely to future interpretation or re-interpretation.

120. If an economic zone was to be established beyond the territorial sea, infringement of the high seas character of the waters of the zone and the superjacent air space must be kept to an absolute minimum. His delegation therefore supported article 2, paragraph 1, of the Nigerian text, subject perhaps to drafting changes. There was a risk, however, that the excellent statement of principle contained in that paragraph could be virtually cancelled out by the kind of subjective formulation which some might read into article 3, paragraph 3, where use of the catch-all phrase "without reasonable justification" could open the door to all sorts of abuses. Those difficulties were increased by the statement in article 4, paragraph 1, that all other States were duty bound not to interfere with the exercise by the coastal State of its rights and competences. If the legal concept of the exclusive economic zone was based on that

principle, the competences of the coastal State could, in effect, become virtually indistinguishable from the sovereignty exercised by that State over its territorial sea. His delegation was therefore unable to associate itself with those proposals, and, in particular, considered that they were not feasible in the semi-enclosed seas of the part of the world to which Israel belonged.

121. Israel's functional approach to the drafting of the law of the sea favoured identifying residual and in some cases preferential rights for the coastal State in the exclusive economic zone, in appropriate circumstances, always exclusively for economic purposes and not for mere administrative convenience. The zone must continue to be a part of the high seas for all purposes save implementation of strictly delimited economic rights, and the air space above it must have a corresponding status. In practical terms a great deal of analysis of the many purposes and functions which the exclusive economic zone was designed to fulfil remained to be done before much progress could be made in drafting. Not all that work could be undertaken by the Second Committee, and there was an obvious need for co-ordination with the other Main Committees, especially the Third Committee.

122. Mr. BALLAH (Trinidad and Tobago) said that his delegation saw an organic link between the three issues of the territorial sea, the exclusive economic zone, and regional, sub-regional or other arrangements for preferential or equal rights of access to living resources within exclusive economic zones or zones of national jurisdiction. In particular, it conditioned its acceptance of the concept of the 200-mile exclusive economic zone on recognition by the Conference of preferential or equal rights for every State within a region or subregion to the living resources of the economic zones of the other States of the region. Moreover, it viewed those three issues as a package on which the Conference would have to take a single decision; it could not decide upon them separately.

123. Since the concept of the exclusive economic zone of 200 miles was new to international law, its adoption by the Conference would constitute a progressive development of the law, not a codification of existing law. Adoption of such a zone, by conferring on States exclusive rights to explore and exploit both living and non-living resources, would deprive other States in certain regions or subregions of rights to living resources to which they had had traditional access under existing law. In that regard, his delegation supported the statement made at the current meeting by the representative of Barbados. It was not opposed to the concept of the 200-mile exclusive economic zone, bold and novel as that concept was, but sought, together with a large number of other delegations, an accommodation of the existing rights of other States over the living resources of the zone. Such an accommodation was imperative for developing land-locked and other geographically disadvantaged States which depended to a large extent on the living resources of the sea for food and employment.

124. His delegation did not envisage a global accommodation of the rights of all States to the living resources of all economic zones or patrimonial seas of the world, but sought rather to accommodate the rights of States within a region or subregion. States within a subregion, particularly one bordered by a semi-enclosed sea, should have equal rights of access to the living resources of the exclusive economic zones of the other States of the subregion.

125. States of the region of which the subregion was a part should have preferential rights of access to the living resources of the exclusive economic zones of the other States of the region. His delegation understood the term "preferential rights" to refer to preferences vis-à-vis States of other regions, and the term "equal rights" to mean that States of a subregion had equal rights of access with respect to each other.

126. Accommodating the States of a region or subregion in the way he had indicated would not in any way derogate from

⁷United Nations, *Treaty Series*, vol. 516, p. 206.

the sovereignty of the State making the accommodation over its exclusive economic zone or patrimonial sea. In fact, such an accommodation would itself be an exercise of sovereignty.

127. His delegation would, individually or in association with others, present appropriate articles for the Committee's consideration on that subject.

128. Mr. SURYADHAY (Laos) said that since the high seas were *res communis* or *res nullius*, it followed that everyone had the right to an equitable share in the exploration of high sea resources. Under contemporary law, the high seas were open to all nations, and no State could validly subject any part of them to its sovereignty.

129. However, the current trend was towards a race for the resources of the high seas. New sovereign States were emerging with a need for accelerated development, and there was a population explosion and very rapid progress in science and technology. If the frantic race for expropriation of the public domain was not checked in the new legal order of the sea, the work of the Conference would be doomed to failure, and the new concept of the common heritage of mankind would become a mockery.

130. As the representative of Switzerland had said, the Conference should regulate uses of the sea-bed and ensure that its exploration was peaceful and for the benefit of all mankind. The problem was basically one of peaceful coexistence and international social justice.

131. The coastal States which could extend their sovereignty and their power by expropriating public areas as they saw fit were in a fortunate position. Their actions worked to the detriment, however, of land-locked and other geographically disadvantaged States. The rich were getting richer, and the poor poorer. The high seas, as part of the public domain, should be subject to a special régime of co-operation for development, thus opening the door to accommodations based on traditional or historical considerations or on the new interdependence of nations. That would be for the benefit of all, particularly for countries which in the past had not had the good fortune to participate in the exploration and exploitation of marine resources.

132. His delegation's position was based on General Assembly resolutions 2467 A (XXIII) and 2749 (XXV), and on the 1973 Algiers Declaration of the non-aligned countries and the Kampala Declaration (A/CONF.62/23). Laos recognized the right of coastal States to establish 200-mile adjacent economic zones on the condition that, in return, non-coastal and other geographically disadvantaged countries enjoyed the right to explore and exploit those areas and to participate in the regulation of all types of resources in them on an equal footing with the coastal States of their region or subregion, and without discrimination. The methods for putting that right into practice should be agreed upon by the States concerned for the purpose of promoting development of the fishing and other industries of the seas of land-locked countries. States which derived revenues from the exploitation of non-living resources in the economic zone should pay contributions to the International Sea-Bed Authority to enable it to fulfil its function of helping developing countries, particularly the least developed among them, to gain an equal share of those revenues.

133. His delegation's acceptance of the establishment of economic zones did not preclude the possibility of establishing regional or subregional economic zones in areas where States agreed to do so. In such cases, resources in the zone should be reserved for the common benefit of the States of the region or subregion, both land-locked and coastal.

134. Laos, like the delegations of other land-locked and geographically disadvantaged countries, found the viewpoint expressed in document A/AC.138/SC.II/L.39 (A/9021 and Corr.1 and 3, vol. III, sect. 28) reasonable and equitable. The public domain must not be expropriated without compensa-

tion, particularly in a world in which one heard denunciations of pillage, colonialism and imperialism and appeals for international co-operation. If the new international order of the seas was to be truly meaningful and effective, the concept of the common heritage of mankind must be based on sovereignty, interdependence and international social justice.

135. Mr. CAFLISCH (Switzerland) said that if there was to be an exclusive economic zone adjacent to the territorial sea, it must be so established as to create the least possible inequality between advantageously positioned coastal States and land-locked or geographically disadvantaged countries. A clear distinction must be made between the territorial sea and the proposed economic zone, because the two concepts served different purposes. In the territorial sea, which had originally been above all an area of security and exclusive fishery, the coastal State now exercised complete sovereignty, apart from the right of innocent passage of foreign vessels. On the other hand, the coastal State now had certain obligations in that sea, such as security of navigation and protection of the environment. The aims in establishing an exclusive economic zone were different and much more limited: the coastal State would be entitled to explore and exploit the living and non-living resources of the area and would be responsible for the preservation of the marine environment. Those limited aims and the jurisdiction required to achieve them must be restrictively and precisely specified. The proposed economic zone must continue to be subject to the régime of the high seas in that it must be open to navigation, overflight and scientific research. The rights of navigation and overflight in the proposed zone must be fully and unequivocally guaranteed. That would not be possible if, as some delegations maintained, the jurisdiction of a coastal State over its contiguous zone was to be extended to the economic zone. There were three reasons for that.

136. First, the proposed economic zone and the contiguous zone served different purposes: within the economic zone, the coastal State would have exclusive exploitation rights over living and non-living resources; its sole competence in the contiguous zone, however, would be the prevention and punishment of offences against certain rules designed to ensure the maintenance of good order.

137. Secondly, the type of jurisdiction to be exercised in each zone was completely different: in the exclusive economic zone, the coastal State would have—chiefly legislative—jurisdiction over natural resources and the preservation of the marine environment; in the contiguous zone, it would have the right to punish certain offences committed or to prevent offences likely to be committed by a vessel or its crew on the territory of the coastal State or in its territorial waters. Its competence did not extend to offences that had been or would be committed in the contiguous zone, and there could thus be no application of rules within that zone.

138. Thirdly, the extension by the coastal State of its customs, fiscal, sanitation and immigration regulations to the economic zone would mean that those regulations could be applied to vessels and aircraft in transit through the zone. The régime governing the economic zone would then be very similar to that governing the territorial sea, thereby removing much of the practical scope of the theoretically guaranteed rights of navigation and overflight. His delegation therefore opposed the proposal to allow the coastal State to apply its customs, fiscal, sanitation or immigration regulations in the proposed economic zone. Nevertheless, the régime of the contiguous zone should be maintained for States whose territorial sea was less than 12 nautical miles wide.

139. His delegation, like those from other land-locked or geographically disadvantaged countries, felt that the establishment of an economic zone benefiting a limited number of coastal States would lead to inequality *de jure* and *de facto*, whatever legal form that zone might take. The institution of a régime of inequality would require compensation, which

should be in the form of a right to participate directly or indirectly in the exploration and exploitation of the resources of the proposed economic zone. That right should benefit all land-locked or geographically disadvantaged States, developed or developing.

140. Mr. O'MEALLAIN (Ireland) said he had a number of comments to make on agenda item 6.6, relating to fisheries.

141. Most species of fish taken for human consumption could be caught only in waters relatively close to the shore. The most effective way of ensuring that the fish stocks were so managed and exploited as to ensure the maximum sustainable yield was to enable the coastal State to establish a sufficiently wide fishery zone beyond its territorial sea, and for it to exercise fishery control throughout that zone. It could hardly be denied that, given skill, adequate equipment and manpower, the coastal State was best placed to ensure the most effective management and exploitation of the fish off its own shores. It would probably also be agreed, however, that should the coastal State be unable to exploit the fishing within its fishery zone to best advantage, provision should be made for other States to do so on a mutually advantageous basis. Consequently, the coastal State should have prior right of exploitation in an exclusive fishery zone regardless of the width of that zone, although that right should be exercised having regard to the legitimate interests of others. Coastal States should determine the size and allocation of catches, but such determination could be referred to a suitable organization which would advise on appropriate figures and on conservation measures to ensure maintenance of the maximum sustainable yield. The coastal State would be the enforcing authority, but there was no reason to believe that co-operation between it and the organization to which it would belong would be other than amicable and profitable. His delegation favoured an appropriate procedure for the settlement of disputes and would support a suitable proposal to that end.

142. Accepting as it did the principle of maintaining any fish population at a level which would ensure maximum sustainable yield, his delegation believed that the State of origin of anadromous fish, with one species of which—salmon—Ireland was closely concerned, should carry the sole responsibility for management and control. In order to survive, anadromous fish had to return when fully grown to the rivers in which they had emerged from the eggs, and deposit in those rivers the ova from which the next generation would emerge and repeat the migration and reproduction cycle. It had to be pointed out, however, that salmon originating in one State could be taken in the fishery zone of a second State in such quantities as to make it necessary for the State of origin to permit all the salmon that might return from the second State's fishery zone to proceed to the spawning reaches. It might be necessary, as a consequence, to curtail or even prohibit the taking of the fish in the waters of the State of origin with consequent hardship to its own fisheries. The wider the zone the more acute was the problem. The State of origin could not therefore be expected to conserve a stock of fish the benefits of which it was partially or substantially precluded from enjoying. The State of origin could virtually eliminate the entire fish stock very rapidly by, for example, impounding the rivers frequented by the fish without making special and costly provisions to avoid such a consequence. The real solution was for the State of origin to be the sole harvester of the stock. His delegation intended to table an article on anadromous fish.

143. Mr. MYRSTEN (Sweden) observed that discussions over the previous few years had shown an unmistakable trend towards wider coastal State jurisdiction over marine resources.

144. The effect of introducing an unconditional economic zone in the North Sea would be disastrous for his country's fishermen. His Government felt that it would be too much to ask its fishermen to abandon their fishing grounds in the semi-

enclosed seas where they had been fishing for hundreds of years just because the geographical configuration of the area would make those waters part of the economic zones of neighbouring countries. His delegation saw the problem as a regional, or even subregional, problem. It seemed that quite a few other geographically disadvantaged States were in the same position. His delegation could readily accept the establishment of economic zones in other regions of the world and hoped to see the States of those regions resolve their problems in a way that suited them, taking into account the special characteristics of their regions.

145. In the light of the views he had expressed, he wondered whether a somewhat changed approach would perhaps make it easier to solve the problem of defining coastal State jurisdiction over marine resources. The Conference had been trying to devise a legal formula applicable throughout the world, but if the work was to succeed, regional and subregional considerations must play a greater part when defining the concept of an economic zone. More law-making should be delegated to the regions; rules should not be imposed upon nations in regions where the provisions did not fit. The countries of each region should solve their own problems within the framework of a set of generally applicable basic provisions. After all, his country had no material interest in regulating fisheries jurisdiction in other regions.

146. He drew the attention of the Committee to paragraph 9 of the Declaration of the Organization of African Unity on the issues of the law of the sea (A/CONF.62/33). The provisions of that paragraph indicated one practicable way of taking regional problems into account. It reflected an admirable spirit of solidarity between the peoples of one continent—an example that should be followed by other continents.

147. Mr. MANNER (Finland) reiterated his delegation's position that if the idea of establishing an exclusive economic zone was widely supported, his delegation was prepared to take a positive stand on the inclusion of provisions on such a zone in the proposed convention on the law of the sea, provided that they formed part of a larger package solution generally agreed upon by participating States. Nevertheless, he wished to clarify the way in which his delegation understood the legal consequences of the establishment of an economic zone.

148. A clear distinction had to be made between the territorial sea and the economic zone, especially with regard to their legal status and juridical nature. The economic zone should not be treated as some sort of extension of the territorial sea. The territorial sea, whose breadth should be a maximum of 12 nautical miles, was an inseparable part of the territory of a State. Consequently, the outer limit of the territorial sea was the sea frontier of the State with other States or with the high seas. The economic zone should be considered in principle as a high sea area in the same way that the continental shelf or fishery zone were considered part of the high seas under existing international law. The traditional freedoms of the high seas should therefore be maintained to the extent that the rights of the coastal State to explore the natural resources of the economic zone and the obligations ensuing from those rights did not prevent the exercise of those freedoms, despite any jurisdiction or sovereignty the coastal State exercised in the economic zone. That principle should be stated clearly in the articles to be approved. The question of the nature of the economic zone must be clarified and agreed upon before the Committee could take a decision on the concept of the economic zone.

149. If the concept of an economic zone was accepted, it would be essential to create an equitable system that would permit the land-locked and other geographically disadvantaged States to participate in the exploitation of the natural resources of the sea areas concerned.

The meeting rose at 7.15 p.m.

23rd meeting

Thursday, 1 August 1974, at 11.25 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Exclusive economic zone beyond the territorial sea (continued)

[Agenda item 6]

1. Mr. CHOWDHURY (Bangladesh) said that his delegation was deeply grateful for the spontaneous sympathy expressed in connexion with the floods in Bangladesh at the 47th plenary meeting, which would sustain his country in its hour of great trial.

2. The mass of sea law built up over the past 300 years had been influenced by economic considerations. The 1958 Conventions had sought to emphasize the special needs and interests—including economic interests—of the coastal States. Any future régime must therefore take into consideration the needs and economic interests of developing countries. In those countries' efforts to improve their standard of living, their need for a sufficient and well-balanced diet could not be overlooked. The seas offered a real prospect of broadening the economic base of a developing country. Until recently marine wealth had been measured in terms of fish, which had been thought to be an unlimited resource, but it was now known that at least 57 elements were dissolved in sea-water and the technology for their extraction already existed. The production of oil and natural gas from the sea-bed and subsoil was naturally of particular importance.

3. The 1958 Conventions had not touched upon the right of poor developing nations to a share of the oceans' total wealth. In view of the diminishing resources of the land, developing nations were increasingly looking towards the resources of the seas to provide them with an opportunity for social and economic development. Their interests had led them to initiate an equitable and reasonable concept of coastal State jurisdiction commonly referred to as the economic zone or patrimonial sea, which would give the coastal States exclusive control, though not full sovereignty, over all living and mineral resources up to 200 nautical miles from the applicable baselines. That concept had been endorsed in declarations adopted by the Organization of African Unity at Addis Ababa in May 1973 (A/CONF. 62/33), by the meeting of Ministers of the Specialized Conference of the Caribbean Countries on Problems of the Sea held at Santo Domingo in June 1972¹ and by the Conference of Heads of State or Government of Non-Aligned Countries held at Algiers in September 1973.

4. The Committee must therefore define the precise nature of the rights to be exercised by the coastal States in the area of the economic zone. The future legal framework should reflect the following key elements: first, the coastal State had sovereign rights to explore the sea-bed and subsoil and the superjacent waters and to exploit their living and non-living natural resources; secondly, it had exclusive jurisdiction for the purpose of control, regulation and preservation of the marine environment and over scientific research; thirdly, it should use its economic zone for peaceful purposes only; fourthly, all States should enjoy freedom of navigation and overflight and freedom to lay submarine cables and pipelines subject to the exercise by the coastal State of its rights as provided in the future convention; fifthly, the land-locked States, subject to an appropriate bilateral or regional agreement, could exercise their equitable

right to participate in the exploitation of the agreed level of the living resources of the area.

5. Despite the criticisms of the concept of the economic zone, his delegation supported the proposals contained in documents A/CONF.62/L.4 and A/CONF.62/C.2/L.21 and believed they could constitute a basis for discussion by the Committee.

6. Mr. WARIOBA (United Republic of Tanzania) said that a number of delegations which had expressed support of the exclusive economic zone seemed to be speaking of a preferential zone as proposed in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, rather than an exclusive economic zone in which the coastal State had exclusive sovereign rights to explore the area and exploit its renewable and non-renewable natural resources, as well as jurisdiction for the purpose of control and abatement of pollution and regulation of scientific research.

7. He hoped that members of the Committee would examine carefully the reasons why his and other delegations had advanced that specific concept. It was a well-considered proposition which did not seek to rely on existing international law, statutory legislation or other enactment, or State practice, although it drew upon them and at the same time tried to eliminate from them anything unsuited to the existing and future needs and aspirations of mankind. The acceptance of that concept would entail fundamental changes in international and national law. The developing countries had not been fairly represented at the earlier Conferences on the Law of the Sea in 1958 and 1960 and consequently their interests had not been adequately considered, but they were prepared to accept any changes in their constitutions and legislation that the adoption of the principle of the economic zone would entail.

8. It had been argued that the exclusive economic zone would drain the resources that comprised the common heritage. But the 200 miles of economic zone was intended to replace the legal continental shelf and the concept of fishery zones. No opponents of the concept could honestly accuse its proponents of draining the common heritage with regard to living resources, for they themselves had refused to include them in that heritage. Scientists had said that the best and most extensive mineral resources lay far from the coasts and, with regard to oil and gas, the economic zone would leave at least some of the continental shelf in the international area.

9. The developing countries in general and the United Republic of Tanzania in particular paid great attention to proper management of marine resources. Their priorities for fish resources were well defined: to provide their people with more animal protein food, to export surpluses in order to develop their economy, to raise the standard of living of their fishermen and to reduce unemployment through the development of subsidiary industries. They therefore paid great attention to maintaining the ecological system of which fish were a part. They realized that if rivers were polluted through uncontrolled dumping of dangerous industrial effluents, that would kill the very resource required as a source of food and raw material for other industries. They were therefore extremely strict with regard to all sources of pollution. They also realized that over-exploited resources took a long time to regenerate. Experience in other seas had shown that it was high time to curb the freedom of the high seas that had resulted in the exhaustion of their fishery resources. Tropical waters had numerous species

¹ Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 and corrigendum, annex 1, sect. 2.

of fish, but in very small numbers. Since the increase in the number of artisan fishermen was worrying resource managers, larger vessels were being introduced to enable the fishermen to go farther off shore. That meant that the developing countries must expand their fishery management area and prohibit factory ships from those waters.

10. It had been said that the requirement of full utilization stemmed from the desire to prevent wastage of resources, but he could not accept the implication that developing countries intended to waste resources in the exclusive economic zone. Nor did they intend to hoard their resources, which was just as much of a crime. All they wanted was fair distribution and rational utilization of the living resources of the sea to satisfy the needs of mankind rather than to swell the pockets of a few. It had also been said repeatedly that fish could not be managed by boundaries. The 200-mile boundary would, however, not apply to the fish, which would be free to migrate laterally, but to the fishermen.

11. To illustrate his point, he explained that near the border between Kenya and Tanzania, the animals belonged to the country in which they happened to be but were free to cross the border. However, if a Kenyan hunter killed an animal in Tanzania, the animal belonged to Tanzania, and if the hunter wished to take it to Kenya he would have to pay for it.

12. His country's fisheries experts had good knowledge of the biology of fish, and of the collection and interpretation of statistics and other environmental data which explained the behaviour of fish and man. Every regulation corresponded to a particular environment, and only after wide application was it awarded international status. The issue was therefore not whether regulations were international but who would adopt them for application in their specific area. The recommendations made by international bodies would not differ widely from national regulations, but they were too general in at least two senses. First, they were designed to cover large areas, and therefore in certain special areas they failed to have the desired effect; secondly, they were minimum regulations and therefore needed to be supplemented. His delegation believed that the coastal state was in the best position to decide whether to apply a recommendation in an area close to its coast.

13. However, the question of enforcement was more important. International regulations were not new, and yet depletion of fish stocks had continued. Indeed, it was the fishermen of the States which championed international regulations who were responsible for that depletion, and those States had done little to enforce the regulations strictly. They preached the need for scientific evidence for fishery management, while their fishermen behaved very differently in areas close to or in the waters of the developing countries.

14. Frankly, the fishery resources in the exclusive economic zone must benefit those living in the adjacent areas. He felt that all delegations should express their interests honestly and openly instead of hiding behind undefined international interests and accusing the developing countries of bad intentions.

15. His delegation had already spoken about the control of pollution and the regulation of scientific research in the Third Committee at the 4th and 8th meetings. Its views on the position of the land-locked countries were well known and were clearly reflected in the Declaration of the Organization of African Unity (A/CONF.62/33). However, he wished to stress that all the elements were equally important. His delegation did not interpret an economic zone as a resource zone. The concept of the exclusive economic zone was particularly important to the developing countries, especially in Africa, and it would be the key point in determining his delegation's judgement on the final outcome of the negotiations in progress.

16. Mr. NJENGA (Kenya) said that his country had expressed its views on the concept of the exclusive economic zone many times in the sea-bed Committee and at other meetings.

That concept had been included in a draft declaration adopted by the Council of Ministers of the Organization of African Unity in May 1973, which had been incorporated in the Declaration on the issues of the law of the sea adopted at that organization's tenth session at Addis Ababa in 1973 and reaffirmed by the African Heads of State and Government at Mogadiscio in June 1974.

17. The draft articles contained in document A/CONF.62/L.4 were constructive and could form the basis for further negotiations, although the formulation in article 12 of that document did not fully meet his delegation's position and it believed that the coastal State enjoyed more than sovereign rights over other resources. Article 11 of the 14-Power draft articles submitted to the sea-bed Committee in 1973 (A/9021 and Corr.1 and 3, vol. III, sect. 29), of which his country was a sponsor, conformed more specifically to its position. The rational management of any natural resource required *inter alia* that the resource should be clearly understood through knowledge acquired as a result of properly conducted fundamental, applied or exploratory research and that it should be exploited in such a manner as to ensure its rational utilization and conservation. It was therefore clear that marine scientific research and the prevention and control of pollution of the marine environment were part of the whole process of management, development and conservation of any natural resource and that one could not be controlled without the other. His delegation therefore did not agree with the Israeli representative's comment, at the previous meeting, on article 26 of the proposals submitted by Kenya on marine pollution (A/CONF.62/C.3/L.2).

18. The 14-Power draft articles submitted in 1973 were still the basic proposals of his delegation, which deemed them to be before the Committee. He therefore considered the exclusive economic zone to be a national area of sovereignty for economic purposes, in which the coastal State not only enjoyed sovereignty over all the resources but also exercised exclusive jurisdiction for their protection. It was therefore inappropriate to enumerate the coastal States' rights and duties within that national zone. On the other hand, the Conference should spell out clearly what rights and interests the international community should enjoy within that zone. Article IV of the draft articles, although similar to article 14 of document A/CONF.62/L.4, was preferable because it brought out clearly that even where the international community was guaranteed certain freedoms, it had to take into account at all times the overriding right of the coastal State to preserve its economic interests. The law established within the economic zone must be regarded as a new law and the freedoms to be enjoyed in that zone must be regarded as different from those subsisting under the present so-called régime of freedom of the high seas.

19. His delegation was particularly concerned at some delegations' insistence on a narrow interpretation of the concept of the exclusive economic zone; they claimed they accepted the concept while seeking to deny the obvious fact that all activities within that zone would have a direct impact on the economic interests of the coastal States in the area. Kenya would therefore not accept any formulation which provided for vague and indefinite rights of the international community within the economic zone, to be enjoyed without the consent of the coastal State. Any rights other than those set forth in draft article IV of the 14-Power proposal must be clearly spelled out, discussed and accepted by the Conference. Otherwise, the concept would be so diluted as to be unrecognizable to those who had fought hard to have it accepted. Were the economic zone concept to be unduly diluted, many delegations, including his own, would have to resort to claiming a broad territorial sea limit of 200 nautical miles in order to assert their justified concern over their resources.

20. With regard to the rights of the land-locked countries, which were to be discussed by the Committee under a subse-

quent item, his delegation endorsed the relevant paragraph of the Declaration of the Organization of African Unity on the issues of the law of the sea (A/CONF.62/33, sect. C, para. 9).

21. With regard to the delimitation of the exclusive economic zone between adjacent and/or opposite States, his delegation hoped that the proposals outlined in document A/CONF.62/C.2/L.28 would be given sympathetic consideration by the Conference.

22. Mr. JUNIUS (Liberia) said that his delegation urged acceptance of a 200-mile economic zone in which the coastal State would have the exclusive right to exploit living and non-living resources. That would not preclude suitable arrangements being made with neighbouring States, land-locked or otherwise, for sharing in fishing activities in the economic zone. The coastal State could also, if it so desired, enter into co-operative arrangements with other States for the exploitation of mineral or hydrocarbon resources. It should be understood that nothing in the proposed economic zone would interfere with the rights of free passage and overflight or with the right to lay and maintain cables and pipelines.

23. Establishment of the economic zone should dispose of the outmoded concept of the continental shelf, which it was generally agreed needed revision. If the high seas and the sea-bed were to be considered as the common heritage of mankind, there was no room for any extension of exclusive rights beyond the 200-mile limit. Abandonment of the continental shelf concept need not result in undue damage to vested interests; even if it did, the sacrifices demanded in no way differed from those demanded of all coastal States if the proposed convention was to achieve its purposes. His delegation believed that the economic zone was a corner-stone of the proposed convention.

24. Mr. JEANNEL (France) said that, since the task of the Conference was to draft a law, he wished to make some observations of a legal nature which might help to reconcile the divergent interests which existed with regard to the economic zone.

25. His country had sought to ascertain the specific motives which had led certain countries, contrary to established usage, to seek to extend their sovereignty over an area extending to 200 miles at the risk of interfering with the freedom of international communications, and in some regions of extinguishing that freedom. His country had concluded that what the coastal States, and more particularly the developing coastal States, were aiming at was to secure rights of an economic nature.

26. The example of the Latin American States bordering the Pacific Ocean illustrated particularly well the problem to be solved. Their economies depended upon fishing carried on primarily in fishing grounds linked to the Humboldt Current, which flowed in an area extending to 200 nautical miles from their coasts. It was therefore understandable that they should seek to secure the exploitation of those resources and to prevent foreigners from endangering the existence of stocks or reducing the catches of the coastal States. To deal with that situation, the Governments could have had recourse to the concept of a fishing preserve and applied it to a zone 200 miles wide. But while the problem of living resources could be solved in that fashion, the same was not true in the case of the mineral resources of the sea-bed and the subsoil thereof to which the same countries could just as legitimately lay claim since the acceptance of that principle in 1958. However, as the relevant Convention applied only to the continental shelf, its provisions were of little benefit to them because they lacked such a shelf. With technical progress making possible the exploitation of mineral resources at great depths and beyond the continental shelf, it was understandable that some of the States concerned should conclude that the best way to protect their interests as a whole was simply to extend the zone in which they exercised sovereignty.

27. Coastal States with a wide continental shelf had no need to take that extreme measure, since the area in which the living resources were found coincided with that of the continental shelf, and they had only to establish a restricted fishing zone encompassing the continental shelf as well. A number of States had taken such action, while others, evidently not realizing that there was such a possibility, had extended their territorial waters, apparently under the impression that they were more categorically securing the rights which they already held with regard to mineral resources. However, it should be noted that such decisions had never been motivated by a desire to control international navigation.

28. The motives which had led to the extension of coastal State sovereignty having been ascertained, it was clear that a means of satisfying the economic interests of the State concerned must be found. The 1958 Convention on the Continental Shelf² had proved that it was not absolutely necessary to extend the zone under national sovereignty for that purpose. The belt of sea under national jurisdiction could be kept to a reasonable breadth, beyond which specific rights of an economic nature to be exercised by the coastal State could be defined. The development of the doctrines of the patrimonial sea and the economic zone had proved that that approach had been very widely accepted.

29. The doctrine of the patrimonial sea approached the problem from the economic standpoint, but, as the term itself indicated, that doctrine was based on the notion of ownership, which had several important consequences.

30. First, the resources of the sea belonged to the coastal State. That did not present any particular difficulties in so far as the mineral resources of the sea-bed and subsoil were concerned, but that was not so in the case of the living resources of the sea, because of their mobility. In that connexion it would be instructive to look at the way in which national legislation had regulated the activity of hunting, which presented characteristics similar to those of fishing. In French law, which probably did not differ very much from that of other countries, capturing a game animal was the only way in which one acquired ownership of it. The owner of an estate did not own the game animals on it. If an animal from one plot of land was captured on another, it was the property of the hunter and not of the owner of the plot of land from which it came. Of course the owner of a plot of land could close it off in such a way as to prevent the movement of game animals but he could hardly control the flight of birds. In the sea, the problem of delimiting the various national jurisdictions was even more theoretical than it was on land. Furthermore, game animals and birds, like the living resources of the sea, would be threatened by extinction if hunting was not regulated so as to ensure their reproduction. However, conservation measures were taken not by each individual owner of a plot of land but by the public authorities for the whole of the territory, while the modalities for the enforcement of those measures might be determined by regional authorities in accordance with the circumstances of the region in question.

31. He was not arguing that exactly the same kind of régime should be applied to the seas, but it seemed to him that the experience gained in the regulation of hunting could suggest possible solutions with regard to the sea at a time when both the necessity of conserving species and the extension of national jurisdiction posed the same kind of problems as those which States had had to solve much earlier on land. Above all, however, an examination of the situation on land demonstrated the inadequacy of viewing the question within the context of the right of ownership.

32. Secondly, the notion of the patrimonial sea implied ownership not only of the living resources and minerals of the sea-bed and subsoil but also of all other possible resources. It was

²United Nations, *Treaty Series*, vol. 499, p. 312.

impossible to foresee whether technical and scientific progress would lead to the discovery of new usable resources or what the conditions of their exploitation might be. It was therefore impossible to rule out the assumption that those conditions might be more or less incompatible with the maintenance of freedom of communications or that the extraction of those materials might jeopardize the general balance of the marine environment. Was it advisable to ignore those risks and recognize in advance a right of States which they might use against the interests of the international community?

33. Thirdly, while it might be felt that the concept of the patrimonial sea did not apply to the air, it did, on the other hand, imply ownership of the water. It could be said that, in the abstract, ownership and sovereignty were two distinct ideas. It remained to be proved, however, that such a distinction had any practical significance when the right of ownership was exercised by a State and not an individual. There was thus good reason to fear that the patrimonial sea might become a mere legal phrase under cover of which sovereignty would be asserted. In those circumstances the other freedoms could only be considered as exceptions to a general rule favourable to the coastal States alone.

34. Fourthly, the adoption of the concept of the common heritage of mankind seemed to have been inspired by the basic concern to halt the trend towards the inclusion of large portions of the sea within areas under national jurisdiction. In the long-standing doctrinal quarrel between the partisans of the *res nullius* and the *res communis*, the international community seemed to have taken the side of the latter. It was therefore paradoxical that its members should invoke the opposing doctrine when it was a question of satisfying their own individual interests, particularly since it was unnecessary to do so in order to meet the legitimate claims of coastal States.

35. The concept of the exclusive economic zone did not appear to pose the same difficulties as that of the patrimonial sea. It implied that States would enjoy and exercise specific rights of an economic nature in a determined zone. It could nevertheless be criticized on the ground that the adjective "exclusive" was being applied to the zone itself, which would simply mean that there could not be another zone in the same geographical space, something which was obvious and surely not what was meant. In reality it was the rights granted to the coastal State which should be described as exclusive, since it was intended that only one State would enjoy them. However, the general character of the exclusivity of those rights might pose certain problems in that it would apply also to living resources. But it was reasonable to expect that the obstacle could be overcome by appropriate adaptations of the formulation to be used.

36. It seemed that in the view of certain delegations the economic zone, by its very nature, would also confer prerogatives on the coastal State with regard to pollution control. That approach was subject to criticism on the ground that it would present such prerogatives as falling within the category of rights of an economic nature. In reality the situation was quite different. What was really intended was to give to the coastal State exclusive control with regard to regulations, policing and the punishment of infractions, which would amount to placing the entire zone in question under the array of competences which were inherent in sovereignty. The fact that such sovereignty would have a functional character would make little difference: the recognition of such sovereignty would still be contrary to the interests of the international community. Before demonstrating the validity of that assertion, he wished to emphasize that the points he was about to make applied only to the powers which would be granted to a State and not to the dimension of the zone within which they would be exercised.

37. A fragmentary approach to regulations aimed at combating a danger which it was agreed knew no frontiers, especially in the seas, was inappropriate since it would lead to anarchy and at the same time would be ineffective owing to a

lack of co-ordination. Moreover, the exercise of such sovereignty would undermine the freedom of communications since it would in effect rule out the application of the law of the flag State in the zone in question. The law of the flag State was the only guarantee of freedom of movement since it forbade the interference of any warship or police vessel with the movement of any ship not flying its flag. Although that law had been devised by the maritime Powers, it actually protected the weak against those few which alone had the material means to police the seas.

38. The thirst for power which was inherent in human nature and which was present in each State would soon take advantage of the breach thus opened in one of the legal systems whose purpose was to contain it within limits compatible with the very existence of international society. The fertile imaginations of national Governments and their jurists could be counted on to find subtle distinctions which would either permit discrimination under cover of rules applicable to all or almost completely impede freedom of movement.

39. A study of the particular case of pollution led to the conclusion that satisfying legitimate national interests while maintaining international public order required a clear and precise definition of the rights which States could exercise individually.

40. In presenting his delegation's view on what the content of the economic zone should be, he had not referred to a subject important to many, namely scientific research.

41. The question of scientific research could not be properly dealt with exclusively within the context of economic rights. It was, moreover, an item which fell within the competence of the Third Committee, and he reserved the right to elaborate on the subject in that forum. For the moment, he would merely state that in the zone within which the economic rights of the coastal State would be exercised, basic scientific research should be governed by provisions analogous to that contained in article 5, paragraph 8, of the 1958 Convention on the Continental Shelf.

42. It followed from his earlier remarks that there should be no obstacle to recognizing that a coastal State had both a right of ownership over the mineral resources of the sea-bed and the subsoil thereof and the right to exploit them. One might, however, question the advisability of employing the terminology used in the 1958 Convention, which spoke of "sovereign" rights. First, that qualification seemed superfluous, inasmuch as its only possible effect could be to specify whether it was a question of rights exercised by a State, and such a specification was entirely unnecessary, because the reference clearly could not be to rights granted to individuals. Secondly, the adjective "sovereign" was inadequate, because the meaning intended was that the rights granted could not be exercised by others. Sovereign rights could be exercised jointly by more than one entity, as was, for example, the case with regard to the right to vote in international assemblies or organizations. The term used should therefore be "exclusive rights".

43. With regard to fishing, on the other hand, it had been seen that it was scarcely possible to invoke the concept of ownership for the purpose of defining the rights of States. A different concept must therefore be sought, perhaps that of exclusive competence. Such a concept, which should not be applied in the case of highly migratory species, such as cetaceans and tuna, would permit the coastal State either to exploit biological resources itself or to authorize natural or juridical persons, whether national or foreign, to fish in its zone. The fish would be the property of the authorized fisher, such ownership resulting from the catching of the fish.

44. Such exclusive competence over fishing would not, however, be of a discretionary nature; it would have to be a restricted competence, inasmuch as the coastal State would have to respect the rules of law applying to fishing on the basis, *inter alia*, on the one hand, of sectoral or regional agreements and,

on the other hand, of the duty of international co-operation for which provision should be made in the convention under preparation for States and, in particular, for neighboring States. It was clear that the establishment of the zone in areas formerly governed solely by the régime of the high seas would entail the need to take account of the interests of the States which had traditionally fished in those areas under that régime.

45. The two following examples might serve to indicate more precisely the purpose of those general observations. First, if the coastal State did not take all the allowable catch, it could not refuse requests submitted to it for fishing permits for the quantities available and should give priority to holders of acquired rights. Secondly, where international or regional regulations already existed for the conservation of species, it would be obliged to take the necessary steps to apply those regulations and to restrict itself to such steps. Such an obligation seemed essential in order to ensure the co-ordination and harmonization necessary for an effective conservation policy.

46. The coastal State would also have to have the necessary means to ensure observance of the applicable regulations. It would thus be necessary to provide for exceptions to the law of the flag, of the same type as those which his delegation would suggest in the case of pollution control.

47. With regard to pollution by vessels, the law of the flag State would remain the rule for the application of norms established at the international level only. It would therefore be necessary to permit the coastal State to exercise, within its area of jurisdiction, certain competences of the flag State if it was to ensure the application of the rules within that jurisdiction. First, the States parties would delegate to each other under the convention those competences which they all held as actual or potential flag States, to the extent necessary to enable the coastal State to take cognizance of violations and submit to their courts reports attesting thereto. Secondly, the competence of the coastal State should be substituted for that of the flag State in the case of penal prosecutions if the latter did not prosecute the perpetrator of a duly attested violation.

48. The foregoing were the legal considerations which his delegation wished to put before the Second Committee. They did not constitute proposals strictly speaking, but rather suggested a method to facilitate the preparation of specific drafts. His delegation was submitting them as such for the Committee's consideration. They were, of course, inspired by a desire to prevent vast areas of the oceans from being made subject to the sovereignty of coastal States because, in his delegation's view, such an extension of sovereignty would run counter to history and, moreover, would benefit primarily those States which already exercised sovereignty over the largest land areas.

49. Mr. DE ALWIS (Sri Lanka) said that his delegation attached special importance to the régime of the economic zone, particularly to the conservation, management and exploitation of its living resources, since much of the population of its country depended on the sea for a livelihood.

50. The concept of the economic zone had gained general acceptance by the international community, which had recognized that the economic interests of the coastal State must be fully safeguarded. In an effort to accommodate those legitimate objectives, a number of coastal States had extended their territorial sea to a distance of 200 nautical miles. It followed that the coastal State should have sovereign and not merely preferential rights over renewable and non-renewable resources up to that distance, and the exclusive right to make regulations to ensure the conservation, management and exploitation of the economic resources over which it had sole proprietary rights. That did not, however, exclude the possibility of joint efforts by neighbouring countries to co-ordinate their conservation, management and exploitation systems, particularly with respect to highly migratory species. Moreover, provision should be made to ensure that the food resources of the sea did not go to waste. On the basis of those two criteria, his delegation

would determine its attitude towards the various formulations on the economic zone. The exclusiveness of the fishery zone was not incompatible with the possibility that the coastal State might allow other States to exploit the zone in order to ensure optimum utilization of its resources for the benefit of the international community as a whole.

51. His delegation would find no difficulty in accepting provisions which sought to ensure freedom of navigation and overflight and the laying of submarine cables and pipelines in the economic zone, provided they were not in conflict with or did not unduly interfere with the coastal State's exercise of its sovereign rights over the conservation, management and exploitation of its economic resources. Accordingly, foreign vessels which violated the coastal State's regulations should be considered guilty of an offence, tried and punished, and should be liable for damage done to the resources. The coastal State should for that purpose have the power to stop and search vessels which they were reasonably satisfied had violated their regulations.

52. With respect to the question of access by States to the resources of the exclusive economic zone, his delegation found it necessary to draw a distinction between renewable and non-renewable resources. The former, if unused or under-used, could go to waste and be lost to the international community; moreover, there might be neighbouring land-locked or otherwise disadvantaged States without access to such resources. His delegation was therefore ready to support provisions whereby the coastal State might grant access by such States to the allowable catch not fully utilized by the coastal State, in accordance with laws prescribed by that State. Provision should be made for the coastal State to take into consideration scientific information and relevant data from neighbouring coastal States and from organizations such as the Food and Agriculture Organization of the United Nations, on the basis of which it would be entitled to fix the periods during which the prescribed species might be caught, the age and size of the fish that might be caught, the quota of catch, whether in relation to species or vessel over a period of time or to the total catch of nationals of one State during a prescribed period, and to specify the type of gear permitted.

53. In determining which other States might be given permission to exploit the resources of the zone, a coastal State might, at its sole discretion, grant rights to States such as neighbouring developing land-locked States in the region, developing geographically disadvantaged States in the region, neighbouring coastal States, States that had traditionally fished in the area and other States, subject to such terms, conditions and regulations as the coastal State might prescribe. With the exception of the first two categories, whose needs ought to be universally recognized and adequately protected, other States might be permitted access subject to conditions such as the licensing of fishing vessels and equipment. The coastal State might take into account the competitive nature of the offer, which might include fees, the training of coastal State personnel, grants of equipment and other opportunities for the transfer of science and technology, or joint ventures. In his own country's waters, other States exploited the fishery resources under such arrangements.

54. With regard to the preferential rights to be extended to neighbouring land-locked or geographically disadvantaged States, it would be self-defeating if those States were to be permitted to introduce technologically advanced States or groups of States as partners into the exclusive economic zone of the coastal State on grounds of co-operation in joint ventures. The historic rights enjoyed by nationals of another neighbouring developing State might, however, be recognized if a substantial part of its population depended for its livelihood on fishing and if such rights were founded on usage over a very long period.

The meeting rose at 12.55 p.m.

24th meeting

Thursday, 1 August 1974, at 3.15 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Exclusive economic zone beyond the territorial sea (continued)

[Agenda item 6]

1. Mr. LING Ching (China) observed that the Asian, African and Latin American peoples had long suffered from aggression and plunder at the hands of the colonialists and imperialists and, accordingly, their determination to see a territorial sea established together with an exclusive economic zone up to 200 nautical miles was entirely proper and reasonable. Their position, which reflected an irreversible trend of the times, had won widespread support; even the two super-Powers had had to recognize in words the concept of the economic zone.

2. On the question whether the coastal State should exercise full sovereignty over the renewable and non-renewable resources in its economic zone or merely have preferential rights to them, he said that such resources in the off-shore sea areas of a coastal State were an integral part of its natural resources. The super-Powers had for years wantonly plundered the off-shore resources of developing coastal States, thereby seriously damaging their interests. Declaration of permanent sovereignty over such resources was a legitimate right, which should be respected by other countries. The super-Powers, however, while giving verbal recognition to the economic zone, were advocating the placing of restrictions on the sovereignty of coastal States over their resources. For example, one of them had proposed that the coastal State should allow foreign fishermen the right to fish within that zone in cases where the State did not harvest 100 per cent of the allowable catch. Such logic made no sense. The suggestion in fact harked back to that super-Power's well-known proposal that coastal States should be allowed only "preferential rights" when fishing their own off-shore areas. Yet, the establishment of exclusive economic zones over the resources of which coastal States would exercise permanent sovereignty simply meant that the developing countries were regaining their long-lost rights and in no way implied a sacrifice on the part of the super-Powers. The coastal State should be permitted to decide whether foreign fishermen were allowed to fish in the areas under its jurisdiction by virtue of bilateral or regional agreements, but it should not be obliged to grant other States any such rights.

3. The land-locked countries should enjoy reasonable rights to and benefits from the resources in the economic zones of their respective neighbouring coastal States. Specific arrangements could be made by means of full consultations between coastal and land-locked countries. Appropriate regional arrangements should also be made by States which had at heart the interests of geographically disadvantaged countries. Any attempt to make use of that question to poison the relations between coastal and other States would be futile.

4. With regard to the question whether a coastal State should exercise exclusive or restricted jurisdiction over the economic zone, he said that exclusive jurisdiction was the natural corollary to the exercise of full sovereignty over resources. If the coastal State did not have the right to protect, use, explore and exploit all the natural resources in the zone, to adopt the necessary measures to prevent those resources from being plundered, encroached on, damaged or polluted, and to exercise over-all control of the marine environment and scientific research and regulate them, there was no point in speaking about full sovereignty over resources. Freedom of navigation for foreign vessels and other legitimate rights and interests of foreign

States should be given reasonable guarantees on the understanding that the relevant laws and regulations of the coastal State would be respected.

5. However, neither of the super-Powers recognized the exclusive jurisdiction of the coastal State over the zone; both proposed instead that coastal State jurisdiction should be subject to "international standards" and that it should comply with "internationally agreed rules". One super-Power had even gone so far as to suggest that the coastal State should not be permitted to regulate scientific research or adopt measures to prevent pollution from ships in the economic zone.

6. To place restrictions on coastal State sovereignty over the resources of the economic zone or on coastal State jurisdiction was to deny the "exclusive" nature of that zone and was absolutely impermissible. His delegation therefore supported the proposals put forward by a number of the developing countries of Asia, Africa and Latin America, including the draft articles submitted by Nigeria (A/CONF.62/C.2/L.21), which not only safeguarded the coastal State's sovereignty over the resources and its jurisdiction over the zone, but also took into account the navigation and other legitimate interests of foreign States.

7. His delegation was firmly opposed to any attempts to bargain over a solution to the question of the exclusive economic zone. For instance, it could not accept the suggestion that free passage of warships through straits lying within the limits of the territorial sea must be recognized before the establishment of economic zones could be accepted; that idea was nothing less than blackmail. In short, no attempt to "make a deal" at the expense of the sovereignty of other States could be tolerated.

8. Mr. GALINDO POHL (El Salvador) said that his delegation recognized the importance for the Conference of the nine-Power draft (A/CONF.62/L.4), which constituted a serious attempt at a compromise between conflicting positions. His delegation therefore hoped that it would be possible to pass from a phase in which each country uncompromisingly defended its position to the stage of "pre-negotiation", and his comments would therefore be directed at initiating a dialogue.

9. The nine-Power working paper was based on the principle of interdependence between the régimes over areas under national jurisdiction and implied that such interdependence must be taken into consideration during the negotiations and in the subsequent drafting of the future convention. Thus, the traditional territorial sea of 12 miles depended upon an economic zone of up to 200 miles, and vice versa.

10. The economic zone—a concept crucial to the general agreement—must be defined in unambiguous terms. The nine-Power working paper did not go far enough in the sense that it did not make a sufficiently sharp distinction between an economic zone and a zone in which preferential rights were exercised. For example, article 7, paragraph 1, rightly stipulated that the waters enclosed by the baseline "belong to and are subject to the sovereignty of the archipelagic State to which they appertain"; but article 12, under the heading "Economic zone", merely spoke of "sovereign rights", without any mention of residual rights or other economic uses of the sea. It would be preferable to draft those articles along the same lines, granting the same kind of powers to States over both types of zones, omitting the term "sovereignty" in the case of archipelagic States, and referring to sovereignty for the purpose of exploring and exploiting the natural resources in the case of the

economic zone. The term "sovereign rights" in respect of the natural resources of the economic zone reflected the compromise solution adopted at the 1958 Conference on the Law of the Sea concerning the nature of rights over the continental shelf, where the term "sovereign rights" had been preferred to the terms "sovereignty", "jurisdiction" and "exclusive rights". In view of the controversy that had then taken place, the Committee might wish to consider whether a legal definition of "sovereign rights" should be incorporated in the draft. To do so might, however, leave in doubt the question of residual powers and rights—a question which his delegation regarded as of crucial importance to the meaningful definition of an economic zone. The silence of the draft concerning such rights and powers could be interpreted as meaning that they were vested in the international community. If the international community maintained effective control, such an arrangement was not unacceptable; but it was well known that when rights were not specifically defined they would in fact be exercised not by the international community but by other States and, more likely than not, by the major maritime Powers.

11. In article 12, the reference to the exercise of rights "in and throughout" the exclusive economic zone might give rise to misunderstandings and should be replaced by the word "over" in order to preserve the spatial connotations of the zone. Accordingly, his delegation wished to suggest the following formula: "The coastal State exercises over an area beyond and adjacent to its traditional territorial sea, known as the 'exclusive economic zone': (a) sovereignty over the exploration and exploitation of the natural resources, whether renewable or non-renewable, of the sea-bed and subsoil and the superjacent waters".

12. The provisions concerning artificial islands and freedom of navigation were both compatible with the spatial connotations of the economic zone to which he had just referred. In the draft in question, the spatial connotation was clear in the case of the natural continental shelf, but when that natural shelf ended between the 12 and 200-mile limits, the régime of the sea-bed would be divided horizontally in the area between the limit of the natural shelf and the remainder of the 200-mile zone. In his delegation's view, there should be a uniform legal régime in respect of the waters and the sea-bed within the zone, and particularly in the entire sea-bed subjacent to the economic zone.

13. His delegation believed that reference should be made to other economic uses of the sea in article 12 (b). It therefore proposed that that provision should be amended to read "(b) the other rights and duties . . . the conduct of scientific research and other economic uses of the waters". Furthermore, the definition of the economic zone should indicate where the high seas began, since that was a prerequisite for the future interpretation of agreed international rules, and must also incorporate a specific reference to the fact that all residual rights and powers would belong to the coastal State.

14. The language of article 15 should be recast to read: "The laying of submarine cables and pipelines shall be effected without interference with the rights exercised by the coastal State in that zone or with other legitimate uses of the sea."

15. The foregoing changes, if accepted, would bring the definition of the "exclusive economic zone" contained in the nine-Power working paper more closely into line with the concept of the zone as it was generally understood. The gap between the concept of the economic zone and the proposal in the working paper was at present too wide.

16. Mr. LAWSON (Togo) expressed his delegation's condolences to the Government of Bangladesh in connexion with the natural disaster which had struck its territory.

17. He said that his delegation attached the greatest importance to the concept of the economic zone—a concept which had been born in Africa and had then quickly gained the sup-

port of other countries of the third world. The success of the Conference undoubtedly rested upon its acceptance, and he was therefore pleased to note that there was almost unanimous agreement regarding its incorporation in the future convention.

18. For his delegation, the economic zone concept implied abandonment of the notions of the contiguous zone and the continental shelf, which had now become obsolete. The zone should be exactly 200 miles in breadth, measured from the applicable baselines. Its establishment did not preclude the delimitation of a territorial sea of 12 miles or more. In accordance with the Declaration of the Organization of African Unity (A/CONF.62/33), which Togo supported without any reservations, the coastal State would exercise permanent and exclusive sovereignty over all living and mineral resources in the economic zone. While the sovereignty of the coastal State over that zone should not be so absolute as in the case of the territorial sea, it was unthinkable that the resources should be exploited by another State without due authorization. The developing countries had seen their resources exploited by the colonialist and neo-colonialist Powers for too long to weaken in their resolve and allow their basic rights to be diluted.

19. The land-locked countries should be granted free access to the sea in addition to their basic freedoms within the territorial sea and the economic zone. His Government was fully prepared to conclude bilateral and regional agreements with neighbouring land-locked countries so as to allow them to exploit the living resources of the economic zone provided that it exercised full sovereignty over the resources therein. He feared that, if the forthcoming convention were to provide otherwise—with the result that selfish third States exploited the resources of the zone—the land-locked countries would stand to suffer most.

20. Mr. VANDERPUYE (Ghana) said that his delegation stood by the position reflected in the 14-Power proposal submitted in 1973 (A/9021 and Corr.1 and 3, vol. III, sect. 29), of which it was a sponsor. However, in order to bring the proposal into line with the recently revised Declaration of the Organization of African Unity, it wished to delete, in the second paragraph of article VIII, the words "the principle of".

21. Contrary to the statement by the representative of New Zealand at the 21st meeting that no attempt had so far been made to reflect in the various draft articles before the Conference the substance of section C, paragraph 10, of the Declaration of the Organization of African Unity, he would point out that article XI of the 14-Power proposal specifically provided that no State exercising foreign domination over a territory should be entitled to establish an economic zone with respect to such territory. None the less, his delegation was willing to concede that the text in section B of document A/CONF.62/C.2/L.30, sponsored by New Zealand and three other delegations, might strengthen the text of the 14-Power proposal and he would therefore commend it to the other 13 sponsors.

22. The draft articles submitted by the Nigerian delegation (A/CONF.62/C.2/L.21), although somewhat narrower in scope than the 14-Power proposal, none the less contained some interesting innovations. In particular, the substance of article 2, paragraph 2, should be incorporated in the future convention, thereby enabling coastal States to enter into arrangements with external fishing enterprises for the exploitation of surplus fish stocks and avoiding the under-utilization of living resources. The convention might also provide for such enterprises to expedite the transfer of fishing technology to developing coastal States and, in particular, to disclose any scientific information regarding the location and type of fish stocks in the area.

23. In conclusion, he expressed the hope that the concept of the exclusive economic zone and its elder cousin, the patrimonial sea, could be brought even more closely into line with each

other, thus making it possible for the Conference to adopt treaty articles at the current session.

24. Mr. THEODOROPOULOS (Greece) expressed his delegation's sympathy with the people of Bangladesh following the recent flood disaster in that country.

25. His delegation, having recently realized the importance for many countries of the concept of the economic zone, and having taken account of the strong feelings of regional groups, particularly the Organization of African Unity, had decided to advocate an exclusive economic zone not exceeding 200 miles.

26. As a major seafaring nation, Greece was anxious to preserve freedom of navigation within that zone. In that connexion, he recalled the draft articles on enforcement of the provisions on the protection of the marine environment (A/CONF.62/C.3/L.4) submitted by his delegation in the Third Committee, in which it tried to harmonize the requirements of coastal States with those of international shipping in the various jurisdictional zones, including the economic zone.

27. He wished also to introduce document A/CONF.62/C.2/L.32 submitted by his delegation, which dealt with two problems, namely the economic zone of islands and its delimitation. While he would reserve his comments on the former problem until the status of islands was examined, he wished to state that, in his delegation's view, islands were as much a part of the territory of a State as its principal territory, and were therefore entitled to the same treatment under international law. As the representative of New Zealand had pointed out, they should not be penalized for being islands.

28. As to the problem of delimitation, his delegation's proposal was consistent with its proposals concerning the territorial sea and the continental shelf; failing bilateral agreement, the rule of equidistance would apply. In that context, he wished to comment on the view expressed earlier to the effect that the notion of equidistance operated to the disadvantage of the smaller State. His delegation was inclined to conclude exactly the opposite: it was the small peaceful State that was protected by the acceptance of an objective rule such as equidistance, instead of having to negotiate on the basis of vague so-called "criteria" under economic, political or even military duress exerted by a more powerful but less peaceful neighbour. Furthermore, many other delegations had expressed persuasive views in favour of the rule of equidistance.

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

29. Mr. ANDERSEN (Iceland) emphasized that the very concept of the economic zone implied the sovereign rights of the coastal State over all the natural resources of the zone, as an integral part of the natural resources of the coastal State. The concept thus replaced the obsolete system of narrow fishery limits under which the coastal State had no rights over fishery resources beyond those limits except through agreement with other States.

30. The view had been advanced that, within the economic zone, resources surplus to the requirements of the coastal State could be utilized by other States. Such a system would be reasonable and even practical, provided the decision lay with the coastal State. If, on the other hand, the decision was left to the other States concerned, or to some third-party settlement, the resulting situation would amount to maintaining the obsolete system in a new form. Instead of the coastal State having exclusive control over an area up to 12 miles wide, plus whatever other States might agree to, the coastal State would have control over an area 200 miles wide minus whatever other States or a third party might decide—even perhaps on the basis of so-called "traditional rights" in the area. That would amount to a change in form but not in substance, and was not in conformity with contemporary realities. In fact the two forms of the concept would give similar results for the distant-water fishing countries, and that presumably was the intention.

For the foregoing reasons, his delegation fully supported the concept of the exclusive economic zone.

31. Mr. SLADE (Western Samoa) stressed the vital importance of the exclusive economic zone to a developing coastal State such as Western Samoa. His delegation naturally supported that concept, and welcomed its wide acceptance.

32. Within that zone, the coastal State should have, first, full sovereignty to explore and exploit the living and non-living resources of the sea, the sea-bed and the subsoil thereof; and, secondly, full sovereignty over pollution control and scientific research.

33. As stated at the 25th plenary meeting, his delegation advocated an exclusive fisheries jurisdiction within a wide economic zone, in particular because of the paramount importance of fisheries as the very livelihood of the people of his country. However, in the light of the concern expressed by several countries, his delegation could accept the idea of a fisheries régime that allowed for the rational management of fish stocks. Under such a régime, the coastal State could offer a percentage of the unutilized available catch to others on terms not unfavourable to it, and would have residual rights to control the fish stocks. It would be most desirable for the coastal State, particularly a developing one, to require the other State to sell, as a basic condition, a certain proportion of its catch to the local market.

34. The coastal State should also have the right to control marine and scientific research; but, in order to ensure that such research was not unduly restricted, the coastal State should not unreasonably withhold authorization. However, only pure scientific research should be authorized. Furthermore, all data collected should, within reason, be made available to the coastal State and, where practical, the training of local personnel should be ensured. On the other hand, no authorization should be given to research that might lead to exploitation of the resources of the coastal State.

35. Freedom of navigation and overflight, and the freedom to lay submarine cables and pipelines should be preserved, but such activities should not interfere with the exercise of the rights of the coastal State within the zone.

36. His delegation believed that the establishment of a broad economic zone of up to 200 miles was consistent with current legal and political trends, and was essential to the sovereign needs of developing coastal States such as Western Samoa, whose special interest in the resources of the sea must be accommodated on the basis of equality. Indeed, because of the unique isolation of his country, those interests should be given special consideration.

37. His delegation had noted with concern the suggestion to limit the ocean space entitlement of islands, including their economic zone, on the basis of criteria of land area and population. Like other delegations from the South Pacific, his delegation assumed that such a suggestion had limited and special application and would find universal application of such a rule completely unacceptable. Not only would it ignore the special characteristics of oceanic islands; it would also deny to countries like Western Samoa full State sovereignty. As the representative of New Zealand had pointed out, such a rule would unfairly penalize island countries in the Pacific and would constitute a discriminatory act not envisaged in international law.

38. As one of the sponsors of document A/CONF.62/C.2/L.30, his delegation wished to draw attention to two provisions of that document. First, article 3 in part A would insure that the economic zone of an island was determined in accordance with the provisions of the proposed convention applicable to other land territory. That was a fundamental equitable principle. The second provision—that set forth in part B—was intended to ensure that the rights to the resources of the economic zone created in respect of territories under foreign domi-

nation or control were vested in the inhabitants of those territories, to be exercised by them for their benefit and in accordance with their needs.

39. While his delegation had concentrated on the problems of an oceanic island State, it was not indifferent to the rights and interests of other countries, particularly those of land-locked and other geographically disadvantaged States, which must be guaranteed access to the living resources of neighbouring waters.

40. Mr. TUPOU (Tonga) expressed his sympathy to the delegation and people of Bangladesh following the recent flood disaster in that country.

41. As a small developing State consisting of many small, widely-spread islands in the middle of the South Pacific, Tonga depended in great measure on the living resources of the sea. However, its small fishing industry was very much in its infancy, and could not supply the demands of the ever-increasing population.

42. With the development of modern technology, the prospect of exploring and exploiting the resources of the ocean floor within the proposed economic zone held out great hope for his country. With no mineral resources in the islands, Tonga hoped that the economic zone would furnish both the food supply and the necessary finance to develop the country.

43. In the light of the foregoing, his country supported the principle of the 200-mile exclusive economic zone within which the coastal State would have sovereign rights over both the mineral and living resources. However, such rights should be limited to the resources of that zone. Freedom of navigation and overflight and the freedom to lay submarine cables and pipelines within the zone must be respected. The coastal State should also have the right to adopt pollution control measures and to control scientific research within the zone.

44. At the same time, the special needs of the land-locked and other geographically disadvantaged States should be accommodated. That could be done on a regional or subregional basis; one such suggestion had been made by the representative of Trinidad and Tobago at the 22nd meeting. His delegation held that, subject to the rights given in a particular region to a land-locked or other geographically disadvantaged State with regard to the resources of the economic zone, the coastal State should issue licences to other States to explore and exploit the resources of the zone under bilateral agreements that were mutually beneficial—for example, a certain percentage of the catch to be sold to the coastal State.

45. With regard to the question of delimitation, his country's position in the middle of the ocean raised no problem. He was certain that delimitation could be carried out peacefully with neighbouring countries, either by agreement or by application of the median line principle. However, his country had noticed with much concern proposals to the effect that islands should have a somewhat restricted ocean space and economic zone. One such proposal was set forth in volume IV, page 117 of document A/9021 and Corr.1 and 3. His delegation was aware that delimitation problems in other parts of the world might have prompted such proposals. If, however, they were to have a wider application, his delegation wished to register its strongest objection. Any such arbitrary criteria which discriminated against islands with respect to ocean space were unacceptable; such a procedure would be tantamount to penalizing a State that not only was isolated by the sea, and thereby geographically disadvantaged, but also had limited land and resources for the needs of its people.

46. In the light of its growing concern, his delegation had joined in sponsoring document A/CONF.62/C.2/L.30, which was designed to give islands the same territorial sea and economic zone as those to be given to other land territories. The 1958 Geneva Convention on the Territorial Sea and the Con-

tiguous Zone¹ recognized the need for islands to have a territorial sea; their equal need for an exclusive economic zone should not be forgotten. With reference to part B of the document, it was his delegation's view that people of territories which had not attained complete independence but which were in all other respects self-governing should have the rights to the resources of an exclusive economic zone, provided that the benefits were used solely for the people of such territories.

47. His delegation submitted that islands should have the right to the same ocean space, including the exclusive economic zone, as had other land territories; and it hoped that its view would be reflected in the working paper to be prepared by the officers of the Committee.

48. Mr. STEVENSON (United States of America) said that his delegation, which was willing to support a 200-mile economic zone as part of an over-all acceptable convention, wished to make some preliminary comments on document A/CONF.62/L.4 which dealt with the economic zone.

49. That zone was a new concept designed to reconcile the primary interests of the coastal State in resources with the primary interests of all States in navigation and other uses. Achieving a balance of that kind was a delicate task that could be accomplished only by a series of carefully drafted articles.

50. While his delegation would welcome comments on its proposals for the economic zone, it could not negotiate in the face of conceptual arguments that any particular idea was incompatible with the "essential character" of the zone. One of the most serious restraints in the history of the law of the sea on the expansion of coastal State jurisdiction over resources had been the concern that that jurisdiction would, with time, become territorial in character. Although the proponents of the economic zone had argued that it could be constructed with sufficient safeguards to prevent such a result, document A/CONF.62/L.4 tended to confirm some of his delegation's serious misgivings. The sponsors had omitted the specific articles that would have made the proposal acceptable. Accordingly, his delegation was unable to express even tentative acceptance of the document as a basis for negotiation, if such acceptance would expose it to a process of fruitless deductive reasoning on the basis of article 12—or, worse still, a future argument that a consensus on such texts was evidence of new general international law.

51. Having said that, however, he wished to reiterate with respect to article 12 (a) that his delegation contemplated full coastal State regulatory jurisdiction over exploration and exploitation of sea-bed resources and fishing within the economic zone, with special treatment for anadromous and highly migratory species.

52. The question of fisheries jurisdiction—a central aspect of the economic zone—illustrated the difficulties inherent in a deductive approach. His delegation supported the inclusion of duties on the part of the coastal State to ensure, by means of appropriate laws and regulations, the conservation and full utilization of fish stocks. It believed that its proposals would stimulate investment in the fisheries of the coastal State, and that additional provisions could be discussed to that end. Moreover, it agreed with the observer for the Food and Agriculture Organization of the United Nations (FAO), who, at the 46th plenary meeting had supported international co-operation in fisheries management, and would encourage States to enter into appropriate treaty and organizational arrangements; however, it was not urging a mandatory transfer of coastal State fisheries management jurisdiction to multilateral commissions. Those points should be negotiated on their merits, and such negotiations would facilitate agreement on the establishment and exercise of coastal State fisheries jurisdiction in the zone.

53. Recognizing that coastal State interests with regard to resources could be seriously affected by certain other activities,

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

his delegation had also proposed an exclusive coastal State right to authorize and regulate all installations for economic purposes, whether or not they were related to the exploration and exploitation of resources.

54. His delegation supported the inclusion of environmental rights and duties with respect to installations and sea-bed resource activities. It also supported some revenue-sharing from mineral resources, provisions on the integrity of investments in the development of such resources, and compulsory dispute settlement procedures to prevent abuse of treaty rights.

55. He hoped that the sponsors of document A/CONF.62/L.4, in referring to further specific articles, would agree that specific negotiation on various aspects of the economic zone proposals should be the main task ahead.

56. Articles 14, 15 and 17 did not make it sufficiently clear that all freedoms of the high seas recognized by the general principles of international law were preserved, except as otherwise provided. Nor was it sufficiently clear that the enjoyment of those freedoms was on an equal footing with the enjoyment by the coastal State of its rights in the zone. His delegation understood, however, that that was the intention of the articles and trusted that only a drafting problem was involved.

57. His remarks also applied to other proposals, including that submitted by Nigeria in document A/CONF.62/C.2/L.21, the comprehensive structure of which should, despite serious substantive problems on some points, commend itself to the entire Committee. His delegation was also encouraged by the remarks of the representative of Nigeria on matters that remained to be dealt with, and looked forward to the detailed elaboration of those ideas.

58. Mr. BIZIMANA (Burundi) expressed his condolences to the delegation of Bangladesh whose country had been the victim of a major natural disaster.

59. Together with other developing land-locked countries, Burundi attached great importance to the right of free access to and from the sea. That right had already been recognized by the Organization of African Unity and he appealed to the international community to do likewise.

60. His delegation recognized and supported the right of a coastal State to establish an exclusive economic zone of 200 nautical miles measured from the baselines used for measuring the territorial sea. The coastal State should exercise permanent sovereignty over all living and mineral resources in that zone, without interfering with the other legitimate uses of the seas. It should also recognize the right of land-locked and geographically disadvantaged countries to exploit the living resources of that zone on an equal footing. He endorsed the view expressed by the representative of Zaïre at the 22nd meeting that the establishment of an economic zone should not be detrimental to the land-locked countries. Burundi would reject the establishment of any zone which did not guarantee the rights and interests of those countries.

61. His delegation did not agree that coastal States should allow all States to fish in their exclusive economic zones since that would mean that developing countries would have to compete with the advanced fishing nations. However, all countries, without discrimination, should have the right to conduct scientific research for peaceful purposes in the marine environment by agreement with the coastal State, which should not withhold such agreement unjustifiably.

62. His delegation rejected the concept of a continental shelf as distinct from the economic zone, and emphasized the importance of the principle of universality for the success of the Conference.

63. Mr. GEORGE (India) expressed his delegation's sympathy to the delegation of Bangladesh in its country's hour of trial. India would render all possible assistance to the people of Bangladesh and he felt sure that the international community as a whole would provide moral and material support.

64. The views of his delegation on the question of the exclusive economic zone were embodied in the proposals in document A/CONF.62/L.4, in the draft articles on fisheries submitted in 1973 (A/9021 and Corr.1 and 3, vol. III, sect. 27), of which India was a sponsor, and in the statement by the Chairman of the Indian delegation at the 27th plenary meeting. The concept of an exclusive economic zone had received more support than any other issue or item before the Conference. The quantum of support could even be termed a "consensus" or "near consensus". While such support was qualified or conditional in certain cases, there was a very wide measure of agreement in respect of the following elements: that the economic zone was a zone of exclusive national jurisdiction and control in respect of its living and non-living resources; that the coastal State should enjoy exclusive rights and jurisdiction in the preservation of the marine environment of the zone and the prevention and control of marine pollution; that it should have the exclusive right to conduct marine scientific research in that zone and to regulate the conduct of such research by foreign vessels; that, with regard to living resources, reasonable provision should be made for the special interests of the land-locked and other geographically disadvantaged States. Sections 27 and 29 of the report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (A/9021 and Corr.1 and 3, vol. III) and document A/CONF.62/L.4 contained relevant provisions and concrete proposals.

65. With regard to fisheries, the technologically advanced nations and the international organizations should participate in a planned programme of assistance to developing coastal States in order to enhance the capability of the latter to explore, exploit and manage the living resources in zones under their exclusive jurisdiction. India had adopted an integrated approach to fishery development and had already initiated a new programme to increase its fishing fleets and provide an adequate infrastructure for the development of its fishing industry.

66. His delegation took the view that the living resources in marine areas under the exclusive jurisdiction of more than one coastal State should be managed by consultation among all the States concerned; that the living resources of the high seas outside the exclusive jurisdiction of coastal States should be explored and exploited under regional and/or international arrangements, taking into account the special interests of countries bordering the area, and with adequate safeguards for optimum utilization and conservation of fish stocks; that joint ventures and similar types of resource utilization programmes should be encouraged in order to link the surplus capacity of developed nations with the technological requirements of developing States.

67. Mr. JÄNICKE (Federal Republic of Germany) expressed his condolences to the delegation of Bangladesh, whose country had been the victim of a major natural disaster.

68. His delegation was prepared to discuss the concept of an economic zone provided it was not merely a camouflaged extension of the territorial sea, but took into account the equal rights of all States and protected the interests of the international community.

69. The crucial issue in the economic zone concept was the proposed jurisdiction of the coastal State over the living resources in those waters. As the living resources of the oceans were largely concentrated within the 200-mile zone along the coast, an exclusive economic zone would mean that those resources would be monopolized by a limited number of coastal, mostly developed, States. His delegation could not agree that such a régime was more equitable than the existing régime of the high seas, which at least offered all States equal opportunities to share in the common resources of the ocean.

70. There was an urgent need for proper management and conservation of fisheries resources and that could best be achieved through the establishment of effective international machinery. While fully appreciating the apprehension of some coastal States, and in particular those States which did not possess technically developed fishing industries, that the fisheries resources off their coasts might be over-exploited, it was the view of his delegation that a modern and equitable régime of fisheries should clearly distinguish between two entirely separate aspects of the matter: the need for effective conservation and the equitable allocation of available resources. In the zone adjacent to its coast, the coastal State should have the necessary powers to implement and enforce agreed conservation measures, and to exercise residual powers in that respect without discrimination in form or in fact against foreign fishing vessels. Appeal against such powers to an independent expert or arbitral commission should be permissible. However, the recognized need for the conservation of fish stocks was no justification for the reallocation of available resources for the benefit of a limited number of geographically advantaged States. His delegation recognized that coastal States, in particular developing States, should have preferential rights regarding the exploitation of the resources off their coasts but such rights must be reconciled with the rights of other States, in particular of those which had habitually fished in those fishing grounds. In that connexion, he referred to the judgment of the International Court of Justice in the Fisheries Jurisdiction case² delivered on 25 July 1974. His delegation intended to submit proposals on the issue under consideration at the appropriate time.

71. Mr. RABAZA (Cuba) expressed his condolences to the delegation of Bangladesh, whose country had been stricken by a major natural disaster.

72. A large number of delegations had expressed their support for, or acceptance of, an extension of the ocean space over which coastal States exercised sovereignty and jurisdiction, or sovereign rights over the living and mineral resources in the waters, sea-bed and subsoil. His delegation hoped that efforts would be made to reconcile the different concepts of the economic zone with a view to the adoption by the Conference of an appropriate régime. One concept was based on the coastal State's sovereignty and jurisdiction over the zone in question, while the other advocated sovereignty over the resources in that zone. The former extended many of the competences of the coastal State in an area which at present was part of the high seas, while the latter contained conditions which limited its competences outside the 12-mile limit. His delegation felt that the two concepts could be reconciled by solving the question of residual competences. Such a solution could be achieved by establishing new zones in which the coastal State would exercise sovereignty and jurisdiction in matters relating to certain enumerated competences. However, such an enumeration should not be considered exhaustive and, where necessary, the coastal State should have the competence to establish regulations concerning matters which were not covered by regional or international conventions, on the lines of the proposals contained in the Santiago Declaration of 1952, the Declaration of Santo Domingo of 1972³ and the Declaration of the Organization of African Unity (A/CONF.62/33).

73. Land-locked countries should have a clearly established right to exploit the living resources of the sea. He endorsed the statement by the delegation of Trinidad and Tobago at the 22nd meeting, and the proposal submitted by the delegation of Jamaica to the sea-bed Committee (A/9021 and Corr.1 and 3, vol. III, sect. 45) concerning the participation of States bordering on semi-enclosed seas in the exploitation of the re-

sources in zones under the national jurisdiction of neighbouring States in the region.

74. It was important to ensure that the benefits deriving from the establishment of extended zones of national jurisdiction or from the right to participate in the exploitation of the extended zones of other States should be reserved exclusively for nationals of those countries on the lines of the provisions in articles 3 and 4 of the Jamaican proposal.

75. Freedom of navigation and overflight should be guaranteed in the zones to be established.

76. His delegation favoured the establishment of new fisheries commissions and the strengthening of existing commissions in order to achieve maximum rational exploitation of fisheries resources. It also believed that international organizations dealing with fisheries should play an important role in fisheries control.

77. Mr. PANUPONG (Thailand) said that Thailand was sympathetic to the idea of broad national jurisdiction without interference with other non-resource uses of the sea. His delegation's acceptance of the 200-nautical mile criterion was conditional upon a satisfactory solution of the question of what was included in coastal States' national jurisdiction and on measures to ensure compensatory rights or benefits for the countries which did not have the potential to extend their jurisdiction to that limit. It could also accept the concept of the coastal State's exclusive jurisdiction over the sea-bed of the economic zone and its subsoil if the coastal State accepted the idea of sharing the living resources of that zone on an equitable basis with other interested States.

78. While his delegation understood the principles of the proposed economic zone, it believed that the concept and the terms used to express it required clarification. The draft articles contained in the 14-Power proposal submitted to the sea-bed Committee (*ibid.*, sect. 29) and in A/CONF.62/L.4, while attempting to clarify the matter, had, in fact, subjected the freedom of navigation and overflight to the restrictions resulting from the exercise by the coastal State of its rights within the area. His delegation considered the words "restrictions . . . resulting from the exercise by the coastal State [of its rights]" to be rather vague and, in that connexion, preferred the wording of article 2, paragraph 1, of document A/CONF.62/C.2/L.21, which recognized freedom of all States in the economic zone regarding navigation and overflight as well as laying of submarine cables and pipelines. Any restrictions should be strictly confined to those resulting from the exercise in good faith of the rights with regard to the exploration, exploitation and conservation of the resources of the sea; the exercise of those rights should not have the effect of obstructing or impeding sea or air international communication.

79. His delegation's acceptance of the 200-mile zone under the jurisdiction of the coastal State depended on the settlement of the problem of what constituted the elements subject to national jurisdiction. In that connexion, his delegation wished to point out that if the proposed jurisdictional rights were fully implemented, close to 36 per cent of the total area of the sea would come under national jurisdiction. Twenty-nine land-locked States would gain practically nothing from the economic zone and close to 80 coastal States would gain comparatively little. Only about 30 States, which represented less than one third of the countries of the world, would gain substantially.

80. In view of the close link between the coastal State's interests and the adjacent sea, taking into account geographical realities, and in view of the vital economic interest in and needs of the coastal State for the resources of its maritime area, it would be legitimate for the coastal State to have exclusive jurisdiction over the sea-bed of the economic zone and its subsoil, which could be regarded as part of its national wealth. His delegation specifically mentioned the sea-bed and its sub-

² Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Merits, Judgment, I.C.J. Reports 1974, p. 175.

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

soil because of the non-renewable nature of the resources contained therein and because of the fact that they were located in a given area.

81. Turning to the coastal State's jurisdiction over the living resources in the economic zone, he noted that the problem of fishing rights, which was one of the most complicated, was of vital interest to many countries including his own. By compensatory rights, his delegation meant the rights of other interested States to access to the living resources of that zone. The interests of other countries could be justified on many grounds, including the fact that the living resources were renewable and their under-exploitation would result in waste. Furthermore, many nations depended heavily on fishing as a source of food and economic development. The most desirable course, therefore, would be the establishment of a régime which would make efficient use of the available living resources while taking into account the interests of other nations, and which would avoid the economic dislocation likely to be caused by any new régimes.

82. His delegation believed that the rights of some categories of States to share the living resources of a coastal State should be equitably determined and, if need be, in different degrees. Those categories included neighbouring States, whether landlocked or coastal, which had fished in the area, geographically disadvantaged States, States bordering on enclosed or semi-enclosed seas and States which could not extend their jurisdictional area to the maximum distance. Those rights should be guaranteed by the provisions of the proposed convention, even though their exercise would require regional or subregional agreements.

83. His delegation wondered whether the concept of a 200-mile economic zone would be applied to islands such as mid-ocean islands, regardless of size. Furthermore, while some delegations had stated that the concept would not apply to territories under foreign domination, his delegation wondered what generally applicable criterion would distinguish between islands with dependency status and those forming part of a given territory. His delegation looked forward to receiving clarifications on all those problems in order to determine its final positions.

84. Mr. ARIAS SCHREIBER (Peru) said that his delegation's position coincided with some of those expressed in document A/CONF.62/L.4. For example, the outer limit of the 200-mile zone should be the maximum distance, though not the only one, for the exercise of the coastal State's rights in the sea adjacent to its coasts and in its soil and subsoil, without prejudice to the régime applicable to those continental shelves which exceeded that distance. His delegation also agreed with the proposal covering the basic rights of the coastal State within that zone of national jurisdiction with respect to the exploration and exploitation of the resources, the preservation of the marine environment, scientific research and the establishment and use of installations.

85. The main difference between his delegation's position and that contained in document A/CONF.62/L.4 related to the nature of the most appropriate institutions for protecting the interests referred to and for reconciling them with those of other States. His delegation believed that that could be done within a single area of sovereignty and jurisdiction which could include a duality of régimes with respect to international communications.

86. Referring to the draft articles contained in document A/CONF.62/L.4, his delegation believed that it had been very important to establish, in article 12, that the coastal State exercised, throughout all parts of the economic zone, sovereign rights for the purpose of exploration and exploitation of renewable and non-renewable natural resources of the sea-bed, its subsoil and superjacent waters. Those jurisdictional rights, as defined by the African countries in the various documents

which they had submitted, should also be mentioned in connexion with the preservation of the marine environment, the carrying out of scientific research and other related interests.

87. In article 14, the formula used in defining the régime for navigation and overflight of the economic zone had two defects. First, the drafting was very vague and omitted one essential element, namely that vessels should assume the obligation to observe peaceful coexistence and good neighbourliness by abstaining from military activities, including the launching or receipt of weapons and explosives, acts of propaganda, espionage or interference with communications. Secondly, if in addition to those obligations, vessels and aircraft should respect the rights of the coastal State in matters of exploration and exploitation of resources, preservation of the marine environment, scientific research, navigation and shipping, then the régime within the economic zone could not be defined as that of freedom of navigation and overflight which governed the international sea, where none of those restrictions were pertinent. It was therefore necessary to distinguish between three different régimes for navigation and overflight of the ocean space: that of innocent passage from the coast to a certain distance; that of free transit from that distance to a maximum limit of 200 miles; that of freedom of navigation and overflight beyond that maximum limit, that is, in the international zone.

88. His delegation also believed that the wording of article 15 was inappropriate when it stated that the coastal State should exercise its rights and perform its duties in the economic zone without undue interference with other legitimate uses of the sea. His delegation wondered what those legitimate uses were. Certainly the authors did not mean the exploration and exploitation of resources, scientific research or the establishment and use of installations, since they had stated that such activities should be regulated by the coastal State. There were other forms of international communications involved, including pipelines and cables and, accordingly, the article should be more precise in order to avoid future conflicts.

89. Article 18 was either unnecessary or not specific enough. He questioned the necessity for stating that exploration and exploitation activity should be carried out exclusively for peaceful purposes. No mention had been made of navigation, scientific research, installations and other uses. His delegation wondered whether the intention was to suggest that the coastal State could not use its own economic zone for purposes of defence or naval exercises. If the intention was to ensure that the activities of other States in the economic zone would be carried out exclusively for peaceful purposes, then it would be necessary to amend the wording. If that was not the intention, then the article was superfluous. The draft also mentioned, in parentheses, under article 13, the requirement for landlocked or geographically disadvantaged developing countries to have equitable rights of access under regional, subregional or bilateral agreements, to the living resources of the exclusive economic zones of neighbouring coastal States. His delegation shared that principle and would express its ideas on it at the appropriate time.

90. His delegation was surprised at the anachronistic idea that the economic zone should be considered as the high seas. First, it should come as no surprise that the concept of the high seas would be replaced by that of the international sea and, secondly, the economic zone was not situated in the middle of the ocean where all States had equal rights, but rather adjacent to the coasts of coastal States, which exercised exclusive rights for the protection of the interests of their peoples. The supporters of the conservative school did not seem to understand that the zone was one of national jurisdiction and not of the high seas or international sea. He trusted that they would realize that the old establishment had, inevitably, ended and that the developing countries were no longer passive spectators

of the exploitation of their seas by other States but had become masters of their destinies.

91. Serious thought should now be given to what the representative of Lebanon had stated at the 9th meeting, namely, that the coastal State should assume, in the economic zone, responsibilities similar, if not greater, to those which they exercised in the territorial sea in order to ensure the rule of law in the complex activities which would be carried out in that zone. His delegation believed that the various drafts on the economic zone had, up to that time, been equivocal in setting out the rights and functions of the coastal State and the regulations for exploration and exploitation of the resources, the preservation of the marine environment and the control of scientific research. It agreed, however, that other drafts had also mentioned the right of the coastal State in authorizing and regulating the construction and use of artificial islands and other installations in the sea, its soil and subsoil. However, they all suffered from the same defect since any enumeration could prove insufficient to cover the responsibilities of the coastal State in the light of the new uses and abuses of the sea which would result in the future. Prudence and realism required the adoption of another method: what should be stipulated were not the rights and functions of the coastal State within its zone of exclusive jurisdiction, but rather the rights and uses granted to other States. Those rights and uses could be the following: the right of free transit for vessels and aircraft of all States with the precise limitations to which he had referred in commenting in article 14 on the use of other means of international communication, including the laying of cables and pipelines, subject to the provisions to be established by the convention; and, the uses by, and preferential treatment of land-locked and other geographically disadvantaged States of the region in the economic zone. That did not exclude the possibility of third States having access to the exploration and exploitation of the resources of the economic zone and to scientific research. On the contrary, the convention could include such provisions on the understanding that those activities would be carried out with the agreement and under the control of the coastal State.

92. His delegation believed that that would be the most suitable approach in order to take into account not only the rights of the coastal State, but also those of other States within the economic zone. If, however, the Conference chose the procedure currently being followed, his delegation believed that in addition to the rights and functions of the coastal State with respect to resources, the preservation of the marine environment, scientific research and the establishment of installations, due consideration should be given to "the protection of other related interests". That addition was absolutely indispensable in order to safeguard what had been defined as "residual rights" of the coastal State. That important safeguard should not be omitted from a convention destined to be in effect for a long time.

93. Mr. MIRCEA (Romania) said that his delegation, from the outset, had been in favour of the new concept of the economic zone or patrimonial sea beyond the territorial sea since that was, above all, an expression of the will and the decision of the developing countries to ensure a utilization of the resources of their maritime adjacent zones more in keeping with their

national interests. That aspect of the progressive development of the law of the sea derived from the more general principle of the full exercise of permanent sovereignty by a State over its natural resources. His delegation therefore believed that the sovereign rights of the coastal States in their economic zones must be real. At the same time, it believed that once that fact had been recognized, agreement on the most adequate means of utilizing the potential living resources of the economic zone should not be impeded. The fact that the authors of proposals on the economic zone had left open several aspects of the question of the preservation and exploitation of the living resources was encouraging in that there was the possibility of access to those zones by other States under reasonable conditions. In that connexion, it seemed appropriate to contemplate certain priorities for the land-locked countries, developing countries in general and States which had made efforts to acquire fishing vessels even though they did not have abundant living resources in the zone adjacent to their coasts.

94. Furthermore, his delegation believed that the idea of maintaining existing international bodies for certain regions and establishing similar bodies in other regions merited attention and would be a good experience in the field of international co-operation. The system could be even further improved taking into account the new legal régime for the zone and the priorities he had cited. Furthermore, approaching the question of the economic zone and its living resources in the context of underdevelopment, his delegation believed that access to the economic zones of developed countries could take place under more favourable conditions than those which should be observed with respect to the economic zones of developing countries.

95. Referring to the question of the delimitation of waters between neighbouring States, he said that the proposals submitted by his delegation during the debate on the continental shelf were also valid for the economic zone.

96. His delegation's proposals for the delimitation of marine or ocean space (A/CONF.62/C.2/L.18) were submitted not only because of the intrinsic unity of the entire ocean space but also for reasons of principle, since all baselines formed part of the coasts. The idea was also of great practical importance in that it would correct or avoid the unfavourable effects of certain natural extensions beyond the coasts or applicable baselines.

97. His delegation's proposals on islands and islets also referred to the delimitation between neighbouring States. That did not mean, however, that it did not agree with the proposals in the Declaration of the Organization of African Unity and other documents of the Conference which stated that islands and islets came under a different régime. Island States had nothing to fear because all the proposals concerning the régime for islands took their particular interests into account. His delegation agreed entirely with what the representative of Madagascar had said at the 22nd meeting regarding islets and uninhabited islands, and it believed that its proposals concerning that category of land extensions would be better dealt with in the context of the economic zone, which could be extended to 200 miles.

The meeting rose at 6 p.m.

25th meeting

Monday, 5 August 1974, at 10.45 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Exclusive economic zone beyond the territorial sea (continued)

[Agenda item 6]

1. RAJA TRIDIV ROY (Pakistan) said that institutions and laws reflected the balance of interests in which they were born and they became redundant if they did not keep pace with changing conditions. The existing law of the sea had been framed to serve the interests which were dominant in the 1950s. Since then the world had undergone fundamental changes, notably, the erosion of the authority of big Powers and the curtailment of their privileges. The laws made to serve the old order now faced serious challenge; the situation called for a reconstruction of existing laws to bring them into line with the changed circumstances. That was why the General Assembly had given the Conference the task of framing new laws to give effect to new concepts and to reflect the developments which had taken place since the two Geneva Conferences in 1958 and 1960.

2. The essence of the concept of the exclusive economic zone was the extension by a coastal State of its jurisdiction to an area beyond the limits of its territorial sea, in which it would exercise exclusive sovereign rights over all the living and non-living resources of the sea-bed, its subsoil and the superjacent waters. The coastal State would necessarily exercise jurisdiction over the preservation of the marine environment, the control of scientific research and the emplacement of artificial installations. Such established freedoms of the international community as were consistent with the exercise of the coastal State's jurisdiction would remain intact.

3. His delegation thought that the exclusive fisheries zone and the continental shelf should be subsumed in the exclusive economic zone, but it would consider the extension of the economic zone to the outer limit of the continental margin when that limit exceeded 200 miles. Probably, the controlling and supervisory jurisdiction of the coastal State over the contiguous zone should also be subsumed in the economic zone, but that would depend on the final definition of the economic zone. His delegation subscribed to the view that the legitimate interests of the land-locked and other geographically disadvantaged States should be taken into account, but a distinction must be made between living and non-living resources. Existing law left no room for anyone to share in the rights of the coastal States with regard to non-living resources, but, where living resources were concerned, ways might be found of accommodating the interests of the land-locked and other geographically disadvantaged States.

4. His delegation was not happy with the distinction drawn in the Nigerian draft articles (A/CONF.62/C.2/L.21) between renewable and non-renewable resources, for while it was envisaged that the coastal State would have sovereign rights over non-renewable resources, merely exclusive rights were provided for the exploration and exploitation of renewable resources. In his delegation's view, the coastal State should have exclusive sovereign rights over both renewable and non-renewable resources.

5. His delegation agreed with the statement of the representative of Peru at the preceding meeting that in article 15 of the nine-Power draft articles (A/CONF.62/L.4) the "other legitimate uses of the sea" should be spelled out. In addition, the residual powers in the economic zone should be vested in the coastal State, and the jurisdiction which the coastal State en-

joyed under the 1958 Geneva Conventions should be subsumed in the exclusive economic zone concept. The inclusion of a provision to that effect in the draft articles would obviate the need for a separate régime for the contiguous zone.

6. Every State had the right and duty to utilize all its available resources for the welfare of its people. To that end, marine resources had a special significance for developing countries. No country could have a better claim to the resources in the sea adjacent to its coast than the coastal State itself, and his delegation appreciated the reasons of security and economic development which had led several States to extend their sovereignty over wider areas adjacent to their coasts. Accordingly, it supported the 200-mile exclusive economic zone. The exclusivity of coastal State jurisdiction did not mean that other States would be deprived of access to the zone; they would be able to participate in the exploration and exploitation of the resources of the zone by making mutually beneficial arrangements with the coastal State.

7. The just claim of coastal States to exclusive sovereign rights over the marine resources lying off their shores had found wide support among developing nations, and even some developed countries had supported the exclusive economic zone. The idea of the zone had been noted by Judge Padillo Nervo in his opinion on the judgment dated 2 February 1973 of the International Court of Justice on the jurisdiction of the Court in the case between the Federal Republic of Germany and Iceland.¹ His delegation welcomed the consensus in favour of the exclusive economic zone. It would be a betrayal of that consensus if attempts were made to dilute the content of the zone concept so as to render it meaningless. The Conference should approve the concept of the zone in its entirety; any dilution would provide added justification not only for the broader territorial seas already proclaimed by some States, but also for similar action by others.

8. Mr. VARVESI (Italy) said that, in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, his delegation had opposed the concept of the economic zone, for three reasons: the very real danger that the concept might entail for freedom of navigation; the possible risks of "creeping jurisdiction" over superjacent waters beyond the territorial sea; and the possibility that the economic zone might become a source of disputes because the stakes would be higher than in the past. Discussions at the Conference had shown that those dangers were by no means imaginary.

9. His delegation nevertheless believed that the reasons put forward by those who favoured the economic zone—the need to protect resources in the coastal areas beyond the territorial sea in order to promote economic development—were valid, and it hoped generally acceptable solutions could be found, based on criteria he would outline.

10. Different solutions were needed for each type of problem. The concept of the economic zone should be based on all the economic rights and obligations of the coastal State in the marine area immediately beyond its territorial waters; but it would be wrong to define the rights and obligations of the various States *a posteriori* on the basis of an abstract concept of the economic zone. That concept was, in his delegation's

¹ *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Jurisdiction of the Court, Judgment, I.C.J. Reports 1973, p. 49.*

view, only a technique used to designate a specific set of rights and obligations.

11. The individual approach to each specific problem meant that determination of the rights of the coastal State over sea-bed resources should be clearly separated from that of its rights over fisheries. Rights over the sea-bed resources, including scientific research, should continue to be governed by the principles of the Geneva Convention on the Continental Shelf² up to a uniform maximum limit to be agreed upon. Account should be taken of the fishing interests of other countries, neighbouring or not, and a suitable role should be assigned to appropriate regional or sectoral organizations.

12. His delegation was firmly convinced that the medium-term and long-term risks of "creeping" coastal State jurisdiction would jeopardize the interests of the whole international community, including those members who today defended progressive extension of national sovereignty over the oceans. To obviate those risks and maintain freedom of navigation, any provisions adopted should make it quite clear that State sovereignty should not extend to the economic zone; in that connexion he had noted with satisfaction the remarks of the representative of Mexico at the 22nd meeting. Moreover, the superjacent waters of the area should be treated as high seas, with adjustments made to reflect the new regulations to be adopted with regard to fisheries. Any residual régime applied in the area should be that of the freedom of the seas, not that of the authority of the coastal State.

13. His delegation could not accept extension beyond the territorial sea of the general jurisdiction of the coastal State over pollution control. However, it was prepared to agree that the coastal State should have specific rights and obligations to supplement the rights and obligations of other States with respect to pollution control.

14. Finally, suitable solutions must be found to prevent international disputes because the stakes were higher than in the past. However, there could be no regional solutions in that respect: all solutions must be regulated by general international law, which at present was the Geneva Convention on the Continental Shelf.

15. He noted with satisfaction that certain delegations whose previous views on delimitation of marine and ocean spaces had been somewhat unrealistic had made an effort to change their positions. Nevertheless, the draft articles in document A/CONF.62/C.2/L.18 appeared to maintain what was to his delegation an unacceptable position.

16. Mr. ROE (Republic of Korea) said that his delegation supported the concept of the 200-mile economic zone in the belief that the interests of the coastal States, particularly the developing ones, in the natural resources of the area adjacent to their territorial seas should be respected, and that the existing international régime concerning the conservation and utilization of living resources was largely inadequate.

17. The rights and competences of coastal States, such as the exclusive right over renewable living resources, sovereign rights over non-renewable mineral resources, specific rights to control marine pollution and scientific research were generally acceptable to his delegation, which also believed that freedom of navigation and the freedom to lay submarine cables and pipelines should be guaranteed.

18. As to the mineral resources of the sea-bed and subsoil, his delegation was prepared to support, as the outer limit of national jurisdiction, a distance criterion of 200 miles in the first place and also the outer edge of the continental margin when the submerged natural prolongation of the land mass extended over 200 miles. That concept of the continental shelf was, in his delegation's view, not at all incompatible with the concept of a 200-mile economic zone.

19. His delegation was particularly concerned with the utilization of the living resources of the sea. The Republic of Korea, with a territory of about 100,000 square kilometres and a population of over 34 million, had many problems: its natural resources were limited, and it suffered from a consequent lack of capital. Nevertheless, it had managed to develop its economy, an important aspect of which was the fishing industry. Over 1.5 million people in the Republic of Korea depended upon fishing for their livelihood. The Republic of Korea was now one of the major distant-water fishing nations, with over 600 fishing vessels engaged in ocean fishing all over the world. In developing that industry, the country had endured tremendous hardships and sacrifices, including loss of human life. The future of Korean fishermen largely depended on the result of the decisions taken at the Conference.

20. He therefore appealed to all delegations to pay sufficient attention to establishing a truly equitable régime of the economic zone in relation to the renewable living resources of the sea. His delegation would be most happy if the régime of exclusive jurisdiction of a coastal State over the living resources of the economic zone could allow the fishermen of developing countries to have access to the part of those resources not fully exploited by the fishermen of the coastal State. He earnestly hoped that general agreement could be reached on the principle that, in order to guarantee the maximum utilization of the living resources of the sea, coastal States should allow such access on a non-discriminatory basis and under reasonable conditions.

21. Mr. LISTRE (Argentina) said that the economic zone should be clearly defined in terms of the authority and obligations of coastal States and should not be confused with other jurisdictions such as those of the territorial sea and the continental shelf. The need to protect the economic rights of coastal States was the basis of the concept of the economic zone and of its extension to 200 miles. Those rights were basically sovereign and related to the exploration and exploitation of natural resources. Coastal States should also have jurisdiction over the preservation of the environment, the conduct of scientific research and the emplacement of artificial installations, which could not be used without their prior consent. The exercise of such rights should not affect the rights of the international community in the zone, namely freedom of navigation and overflight, as well as the freedom to lay submarine cables and pipelines enjoyed by all States forming part of the international community, subject only to those restrictions arising from the exercise by the coastal State of its jurisdiction.

22. The fundamental principle was that the coastal State had exclusivity of rights in the economic zone; in other words, it alone could decide whether the resources should be exploited by its own nationals or by third parties. A coastal State might choose to allow a third party to exploit any resources which it could not exploit itself, but it must not be under an obligation to do so. Only the coastal State could determine the optimum catch of fish and set the amounts which third parties should pay for fishing rights. The coastal State could treat marine resources in the same way as land resources. Every country would, of course, seek to draw the maximum benefit from the full exploitation of its resources.

23. The obligations of coastal States should also be clearly defined: for example, they must protect living resources and apply the international regulations for the preservation of the environment; both the coastal State and the international community would benefit from such actions.

24. His delegation thought that the nine-Power draft articles (A/CONF.62/L.4) were useful and it could accept them on the whole. Indeed, they might be used as a basic document in the Committee's work.

25. Mr. TANOË (Ivory Coast) said that his country took an active interest in the questions under consideration. In essence,

² United Nations, *Treaty Series*, vol. 499, p. 312.

its concerns had been reflected in the statements of the majority of African States during the general debate in plenary meetings, particularly in the statement of the delegation of Senegal at the 38th plenary meeting; Senegal was the spokesman at the Conference for the peoples and Governments of Africa.

26. The problem of the exclusive economic zone was perhaps the crux of all the problems being considered at the Conference, and if it was not resolved before long, those who entertained optimistic hopes for the next session would be bitterly disappointed. While the Conference would eventually have to find a global solution to the problems before it, what had to be done now was to get it moving. One way for it to make noticeable progress was for those countries which were anxious for it to succeed to state clearly, and without equivocation, that they recognized the coastal State's sovereign economic rights over the exclusive economic zone and its right to establish an adequate legal order governing the many activities which took place in the zone. That legal order should guarantee respect for the laws and regulations of the coastal State and at the same time preserve the marine environment and regulate scientific research.

27. The exclusive economic zone was a creation *sui generis*, based on economic justice, to which people would have to become accustomed. Instead, some countries were expressing doubts about the nature of the zone and nourishing idle preoccupations about its future development, or else they were attempting to empty the zone of all meaning and reduce it to a mere 200-mile line, or at best to a mere receptacle.

28. The sea-bed beyond national jurisdiction had been declared *res communis*, but the developed countries wished to make it *res nullius*. Almost all States, including the developed ones, had stated that they favoured the establishment of a 200-mile economic zone, but the developed countries, by proposing preferential rights, were trying to reduce the zone to a meaningless phrase, thus taking away with one hand what they gave with the other, without concern for the contradictions which that attitude implied.

29. It was clear enough that the exclusive economic zone, unlike the territorial sea, was not an area in which the coastal State would exercise full sovereign powers. Rather, it would exercise specific exclusive powers which, although only partial, must, nevertheless, have some coherence.

30. The many appeals for balanced solutions which had been made at the Conference did not refer to a mere mechanical balance between units that were not of equal weight. His delegation wondered what balance there could be between a fishing boat that could not leave its regional area and one which sailed the high seas. Fortunately, it was possible to establish apparent imbalances which were in fact real dynamic balances because they conciliated various interests. That was the sort of balance which must be sought if the development of the poorer countries was not to continue to be held up. In other words, the developing countries could not be satisfied with an extension of the sea area under their national jurisdiction if it did not promote their economic and social development.

31. The developed countries were surprised that the developing countries wished to recover their sovereign rights over the riches of the sea as soon as possible in order to protect the rights of present and future generations of their peoples. It was understandable that that trend had gathered momentum when certain groups of countries were making reservations about the very fair proposals made by the developing countries so as to secure remunerative prices for their natural resources and to break the strangle-hold of their deteriorating terms of trade. At the same time, the developed countries were very parsimonious in the way they transferred their technology, or transferred it only at exorbitant prices, and were most reluctant to devote even a tiny part of their gross national product to the economic and social development of the third world.

32. His delegation had come to Caracas with an open mind, prepared to help in the search for positive results; but it was not going to be browbeaten.

33. There could be no doubt about the willingness of the developing coastal countries to enter into regional and bilateral co-operative arrangements for the optimum exploitation of the fishery resources of the exclusive economic zone. The argument that the exclusive economic zone might be under-exploited because the countries encouraging fishing ventures were under-equipped was an unsuccessful attempt to disguise an age-old concern of the developed countries—that of safeguarding their special interests, which hindered the development of all States.

34. His delegation found a great deal of merit in document A/CONF.62/C.2/L.21, but it felt that article 2, paragraph 2, of that document was in conflict with the idea of the coastal State's exclusive rights over the zone. It was a prerogative of the coastal State, not of other States, to exercise its sovereignty in making the necessary arrangements for ordered and optimum use of the living resources of the zone. The provision was thus unnecessary, and any insistence on maintaining or strengthening it would make it suspect or even dangerous in his delegation's view. States which for reasons beyond their control were now developing countries were not willing to share the exploitation of their natural resources with developed countries but preferred to exploit all those resources themselves. His delegation wondered why an instrument that was designed to endure should make provision for a situation which by its very nature was only temporary. In that regard, the only express provision which would seem legitimate to his delegation would be one which took due account of the particular situation of the land-locked or otherwise geographically disadvantaged developing countries.

35. His delegation believed that document A/CONF.62/L.4 could, to a certain extent, be a good basis for negotiation. It was glad that efforts were being made to reach a consensus concerning the exclusive economic zone and other related questions. However, in view of the attitude of certain developed countries, it would seem that the African and other developing countries might have been wrong in not demanding, purely and simply, a territorial sea 200 nautical miles wide. That would have simplified the problem. He wondered, furthermore, whether it was not really in the interest of certain countries to have the Conference fail.

36. The exclusive economic zone was a good compromise for it was the only solution which gave real meaning to what had been called a territorial sea of a reasonable breadth. In his delegation's view the idea of a territorial sea of 12 miles had not yet been accepted, since it was bound up with the establishment of a genuine exclusive economic zone.

37. The Ivory Coast, which had not acceded to the Geneva Conventions, was providing in legislation currently being enacted for a 200-mile zone of national jurisdiction in which it would have exclusive rights over both living and non-living resources. It reserved the right to define and delimit at a later date the various régimes applicable within that zone. His country was thus concerned not only to ensure the success of the Conference but also to harmonize its position with those of other African nations. Establishment of the exclusive economic zone would not prejudice freedom of navigation and overflight or the freedom to lay submarine cables and pipelines.

38. Mr. OCHAN (Uganda) said that his delegation wished to restate its position with regard to the economic zone, and to comment on new ideas and proposals that had been advanced. Uganda, as one of the least developed among the developing countries, and a land-locked State, attached great importance to the issue.

39. His country's under-development was attributable to its geographical position. Progress sprang from rapid and planned industrialization, foreign trade and developed communica-

tions, all of which were inadequate in Uganda and in other geographically disadvantaged States. Additional adverse factors were sparse population, poor soil, aridity, high altitude, steep slopes, lack of exploitable mineral resources and distance from markets, which could only be overcome in time through the sound planning, capital investment, technology, skilled labour and good management that were in short supply in all disadvantaged countries. Some land-locked States were obliged to export labour to pay their way. Such States were heavily dependent upon more powerful neighbours for foreign trade and transportation facilities, and consequently looked beyond their borders for resources to promote development.

40. The document shortly to be submitted by his own and a number of other delegations proposed that, in return for the land-locked countries' support for coastal States in their claims to extend their jurisdiction to 200 miles over waters that were in fact the high seas—the common heritage of mankind—the latter should recognize the right of land-locked States to explore and exploit all the living and non-living resources within that zone. It also proposed regional and subregional arrangements for that purpose among coastal and land-locked countries.

41. Coastal States bore heavy responsibilities for proper management, preservation of resources and pollution control in the economic zone, to which land-locked countries could make a modest contribution. The two groups of States should co-operate in ensuring freedom of navigation, overflight and scientific research.

42. The proposal of which Uganda was a sponsor was designed to cover both disadvantaged land-locked States and advantaged coastal States. If it were accepted, the noble sentiments repeatedly expressed by the latter would be translated into action.

43. Finally, the delegation of Uganda rejected the note in square brackets following article 13 in document A/CONF. 62/C.4, in which a distinction was drawn between developed and developing land-locked and geographically disadvantaged States, the motives for which appeared to be somewhat dubious. If that distinction were to be applied to developed and developing coastal States, the former's claim to the economic zone would have to be made subject to reservations and restrictions. Uganda would never associate with a developed State under dubious conditions; its continued association with developed land-locked States was in its own interest.

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

44. Mr. VOHRAH (Malaysia) expressed his delegation's solidarity with other developing countries of Asia, Africa and Latin America in fully supporting the establishment of an exclusive economic zone beyond the territorial sea, up to a limit of 200 nautical miles. Establishment of such a zone should be viewed against a background of a long history of exploitation of marine resources by a handful of advanced maritime Powers, while under-developed countries benefited hardly at all. The establishment of such a zone would for the first time allow coastal States to benefit fully from the living and non-living resources of the zone, and would also enable a country such as his own to develop its nascent fishing industry. Malaysia would take the necessary steps to conserve the marine environment in the zone and to prevent pollution, especially vessel-based pollution, which of late had become a very serious problem for his country.

45. Establishment of the zone would in no way adversely affect the interests of the international community. While it would benefit coastal States, it would also allow other States the freedom of navigation and overflight and the laying of submarine cables and pipelines which they had always enjoyed. Coastal States would, in the main, exercise exclusive rights over living and non-living resources of the zone. However, his delegation shared the view that scientific research could not be

undertaken in the zone without the express consent of the coastal State concerned, and that that State should participate in the planning of the research and be entitled to participate in it and benefit from its findings.

46. His delegation shared the view of many others that the régime currently applicable to the continental shelf under existing international law should continue to be recognized in the new convention. The Conference, while redrafting new principles of the law of the sea, should not cast aside all the old ones. His delegation did not share the view that the concept of the continental shelf should be absorbed within that of the exclusive economic zone. Malaysia, as a party to the Geneva Convention on the Continental Shelf, had exercised rights under that Convention and enacted legislation in conformity with it.

47. His delegation wished to listen to the views of more delegations before making any remarks on the question of the relationship between the contiguous zone and the exclusive economic zone, and, in particular, on that of whether the powers exercised by coastal States in the contiguous zone under the Geneva Convention on the Territorial Sea and the Contiguous Zone³ should be extended to the economic zone.

48. His delegation had certain reservations concerning article 6, paragraph 1, of document A/CONF.62/L.4. In keeping with the views on the archipelago concept which it had expressed at the 35th plenary meeting, it was concerned that if archipelagic States were allowed to draw straight baselines connecting their outermost islands, vast areas of marine space, sometimes grossly disproportionate to the land area, would be enclosed, and vast expanses of water which had once constituted high seas would suddenly become subject to the sovereignty of archipelagic States. A further claim by archipelagic States to an exclusive economic zone beyond their territorial waters would create a new dimension to the problem, particularly in the South-east Asia region, where it would result in inequitable and unbalanced apportionment of marine space.

49. His delegation also had reservations about article 6, paragraph 2, of the same document, as it found that the paragraph did not fully recognize the serious problem that a country such as Malaysia would face. Two groups of Indonesian islands dotted the South China Sea between West and East Malaysia, and the Indonesian archipelagic boundary as claimed would end the free access and communication, so vital for the maintenance of Malaysia's geographical, economic and political unity, which his country had always enjoyed. Malaysia therefore wished to see reflected in that paragraph a clear recognition and guarantee of all its existing rights of access and communication.

50. His delegation also had difficulty in accepting the provisions of article 7, which, it believed, qualified those of article 6. He wished to appeal to the sponsors of document A/CONF. 62/L.4 to give serious thought to the provisions of those two articles.

51. The views which he had just expressed were without prejudice to Malaysia's position on the régime applicable to island States and islands.

52. Mr. TREDINNICK (Bolivia) said that the more than 500 kilometres of Pacific Ocean coastline which Bolivia had had from a very early date as a maritime province of the Incan empire had been maintained by the Spanish colonizers, who had extended Bolivia's limits to the Pacific Ocean. Thus, Bolivia had had more than 500 kilometres of coastline at its independence, and a territorial sea of 3 miles. That coastline, together with a vast territory rich in saltpetre, guano and copper had been conquered by a neighbouring country in the "saltpetre war" of 1879.

53. Bolivia was now the only really land-locked country in South America, and it was a geographically disadvantaged

³United Nations, *Treaty Series*, vol. 516, p. 206.

country as well, even though four of the five countries which bordered it had extensive coastlines which were fed by numerous and abundantly rich rivers originating in Bolivian territory.

54. Bolivia's most important national problem was to find a proper and sovereign outlet to the sea. The injustice of 1879, which was truly a mutilation of Bolivian national territory, could not be accepted indefinitely. The modern world was undergoing a complete process of readjustment towards international justice dominated entirely by nobler concepts of civilized relationships between human societies. In this new period of international relations and in a world of scientific and technological progress, the narrow-minded and selfish ideas which had dominated the eighteenth and nineteenth centuries and which had brought about the injustice suffered by Bolivia could not be perpetuated.

55. Since four of its five neighbours belonged in some fashion to the so-called "200-mile club", Bolivia could not ignore that important trend in the modern law of the sea. It would accept a territorial sea of up to 12 nautical miles measured from the applicable baselines, combined with a regional economic zone of a maximum breadth of 200 nautical miles, in which there was full participation, with equal rights and duties, for neighbouring land-locked countries.

56. Bolivia was part of the international community, part of a region and subregion, and a member of regional and sub-regional bodies. His delegation therefore attached considerable importance to the concept of a regional economic zone. For millions of years the rivers and the winds had carried vast quantities of Bolivia's riches to the seas, the sea-bed and subsoil, thus depriving the land of its resources, including its fertile soil. That process would continue for a very long time, but now, with the needs for growth and social progress of the developing non-coastal countries, it had to be reversed legally. The sea must return to all countries, including non-coastal countries, part of the vast mineral riches which had created the regional economic zone or regional patrimonial sea. Bolivia proposed the term "regional tributary sea" for that economic area because, in its own case, practically all its rivers were tributaries of the Pacific ocean basins, the Rio de la Plata and the Amazon. Now the sea must pay tribute to those countries which for millions of years had nourished it.

57. In the "regional tributary zone" established between the 12-mile territorial sea limit and the maximum of 200 miles there must be full participation by all neighbouring States, whether or not they bordered on the zone, and participating States must have exclusive common rights, including the power to regulate exploration of the seas, the sea-bed and the subsoil, and exploitation of the renewable and non-renewable resources of the zone; to adopt necessary measures to preserve the marine environment; and to control scientific research.

58. Land-locked and other geographically disadvantaged countries, in accepting extension of the territorial sea from the traditional 3 miles to 12, a tendency which appeared to predominate at the Conference, had already given up part of their rights under the 1958 Convention on the High Seas.⁴ Article 2 of that Convention provided for participation by non-coastal States in exploitation of living resources, and international justice required that non-coastal countries participate in exploitation of non-renewable resources as well. Those resources were actually renewable in practice, since the rivers of land-locked countries replenished them.

59. The developing countries had to assume a leading role in structuring a new law of the sea which respected the legal equality of States, eliminated all forms of hegemony and dependence and applied the principles of international social justice to the use of ocean space and its natural resources beyond the territorial sea up to the maximum 200-mile limit.

New and more just rules, more in accordance with the needs of the less advanced countries for development and economic diversification, were being established. The new law of the sea must be broad, modern, codified and observed in practice. It was clear from the general debate that there was a strong tendency to recognize the right of adjacent non-coastal countries to participate in the exploitation of renewable and non-renewable natural resources of the regional economic zone, regional patrimonial sea or regional tributary sea on a basis of equality with coastal States and without discrimination. The new law of the sea, if it was to be an instrument of justice, peace and well-being for all mankind, must establish a legal order which ensured the use of ocean space and the rational exploitation of all its resources by all countries, coastal and non-coastal. It must also prohibit any form of domination or coercion.

60. The interests of countries with long coastlines, and those of countries with short coastlines, no coastline, or other geographic disadvantages, could be reconciled only through the establishment of broad regional economic zones which did not exclude technical advice or financing provided by third parties subject to formal approval.

61. In the regional tributary zones which he had described, there would be innocent passage, freedom of navigation and overflight, and the freedom of laying submarine cables and pipelines, where applicable, without restrictions other than those required for peaceful coexistence or established by participating States, in exercise of their rights and in recognition of the interests of co-operation with other States.

62. The principle that the sea-bed and ocean floor beyond national jurisdiction were the common heritage of mankind, which had become a norm of international law, must apply, *mutatis mutandis*, to the regional tributary zone. That zone should be administered by a regional authority which had the power to undertake, by itself or in association with others under its effective control, exploration, exploitation and other related activities in the zone, to prevent undesirable economic and ecological consequences which could result from such activities, and to ensure equitable distribution of the resulting benefits, taking into account the special interests and needs of the developing countries, including the non-coastal countries.

63. The principles which he had set forth should be developed in a new convention so as to specify the extent of the rights and duties of participating States and of third parties, and to take into account the modern needs of economic development and social progress.

64. Mr. CISSE (Senegal) said that his delegation unreservedly supported the idea of an exclusive economic zone, including a fishing zone, of no more than 200 nautical miles measured from the baseline of the territorial sea.

65. In that area the coastal State would have exclusive rights to all living and mineral resources. However, in accordance with the Declaration of the Organization of African Unity (A/CONF.62/33), African coastal States would permit participation in the exploitation of living resources by neighbouring land-locked countries on an equal footing. His delegation was gratified at the plans put forward by members of the West African Economic Community, half of which were land-locked, to pool the fisheries resources of their subregion, and hoped that similar projects would shortly be adopted in other African subregions, in order to implement the provisions of the Declaration of Heads of State and Government of the Organization of African Unity.

66. In setting up an exclusive fishery zone, Senegal had provided for the possibility of bilateral agreements with any country wishing to participate in the exploitation of its fish resources in return for satisfactory assistance in achieving the objectives laid down by the Senegalese Government.

67. His delegation believed that, in accordance with the Declaration of the Organization of African Unity and with existing

⁴ *Ibid.*, vol. 450, p. 82.

law, mineral resources should remain under the exclusive sovereignty of the coastal State, including those to be found in the continental shelf. In that connexion, his Government intended to put forward a draft defining and delimiting the continental shelf at the next Conference of Ministers of the Organization in February 1975.

68. With regard to adjacent or opposite countries, his delegation was of the view that agreements should be concluded between the parties concerned on the basis of equitable principles, taking into account geographical and geomorphological factors as well as special circumstances.

69. His delegation, while denying that the exclusive economic zone could in any way be identified with the high seas, fully agreed with the principle of freedom of navigation, overflight and the laying of cables and pipelines. Nevertheless, the coastal State must be sovereign in taking all measures it considered necessary to prevent pollution, regulate scientific research, ensure the preservation of the marine environment, and the protection and renewal of living species.

70. He stressed, in conclusion, that the developing countries were prepared to accept respect for traditional freedoms on the understanding that that respect was not used to void of meaning the concept of the exclusive economic zone.

71. Sir Roger JACKLING (United Kingdom) recalled the statement by the United Kingdom Minister of State at the 29th plenary meeting that the United Kingdom was now prepared to discuss the concept of a 200-mile economic zone provided satisfactory rules for such a zone were established and freedom of navigation was maintained, and now proposed to explain what those rules might be.

72. The concept of the economic zone had arisen from the desire of many coastal States to control all types of resources within 200 miles of their shores. In his delegation's view, such rights, described as sovereign and/or exclusive, already existed under existing international law in respect of the minerals of the continental shelf throughout the natural prolongation of the land mass. The superjacent waters, however, remained high seas. The term "sovereign rights" as used in the Convention on the Continental Shelf of 1958 gave the coastal State all necessary rights, powers and jurisdiction for the stated purposes of exploring and exploiting the natural resources of the sea bottom. Those rights were "exclusive" in the sense that if a coastal State chose not to exploit the minerals in its continental shelf, no other State might do so without its consent. If the concept of the economic zone were to be embodied in the future law of the sea convention, those rights must, as part of that concept, be maintained throughout the natural prolongation of the land mass.

73. The concept of the economic zone also embraced the principle of exclusive rights for the coastal State to the resources of the water column out to a distance of 200 miles. That concept was not attractive to his delegation, and if it were embodied in a generally accepted and ratified convention would markedly affect existing and established rights in international law. Nevertheless, his delegation was prepared to envisage, as part of an over-all package, that the coastal States should gain such rights, on the clear understanding that, as in the case of the continental shelf, those rights extended to the resources, whereas the waters of the economic zone continued to be high seas where the freedoms of navigation and overflight were maintained. Moreover, in regard to living resources, due account should be taken of migratory habits, conservation requirements and above all the maximum utilization principle, since valuable sources of protein for human consumption must not go unused. In his delegation's view there should be an obligation upon the coastal State to allow others, perhaps with preferences for some, to fish for that part of the stock which its own vessels could not by themselves harvest.

74. That attitude marked a fundamental change from his delegation's previous position, although it was not, of course, the only delegation making such changes of position in an effort to contribute to general agreement. His delegation had, however, made it clear that it regarded the coastal State rights in an economic zone to be rights in relation to the resources of the sea-bed and the water column. It had therefore been deeply concerned to note a growing tendency to take for granted those rights to the resources, and to make demands for further competences, not directly related to resources, within the zone. There had been claims for exclusive coastal State jurisdiction over pollution control and scientific research. At their most extreme those demands had been expressed in terms which would render the concept of the 200-mile economic zone indistinguishable from that of a 200-mile territorial sea. That was not at all the proposition which his delegation had undertaken to discuss; it offered no prospect whatever of a general agreement leading to a convention universally accepted and ratified.

75. In discussing the concept of the economic zone there had been a tendency for delegations to speak in somewhat theoretical terms. He therefore thought that it might be useful to spell out some of the practical difficulties that would result if economic zones were in effect to constitute a series of coastal State sovereignties.

76. With respect to the implications for scientific research, he pointed out that the benefits from marine science flowed indirectly to all States, coastal and land-locked. Its benefits were frequently on the scale of whole ocean basins, and it might be essential to make observations in key areas far from those most likely to benefit. It was therefore essential to all mankind to maintain the degree of freedom which marine scientists had required in the past to make observations in the ocean. It would be gravely prejudicial to science generally to give one coastal State the right to block research that was being carried out in the interests of a whole region and that might benefit the whole world.

77. Much the same considerations applied to shipping. The economy and efficiency of the shipping industries of the world, and hence of the trade of every country, maritime or otherwise, depended on ships being able to the maximum extent possible to move without restriction from country to country, to follow the flows of trade, and to move for example from a summer trade in one part of the world to a winter trade in another. If coastal States had unconditional sovereignty entitling them to impose their own requirements regarding shipping design and construction, difficulties would be bound to ensue. It had been fairly widely accepted in the discussions that the result might well be that a ship able to go to country A would not be able to pass through the waters adjacent to country B, its neighbour. It was equally true that even regulations on discharge from ships, if applied over a wide sea area, affected their design and construction or equipment. If discharge were stopped at sea, ships would have to discharge on land, and that would mean that they must be designed and constructed to retain waste on board for the necessary period. At present, shipbuilders knew the standard of construction they had to adopt to meet internationally agreed discharge regulations, but if they were faced with a series of varying regulations, it would be virtually impossible to design ships that could move through all the areas that were regulated. Consequently the economy of ship movement would be drastically reduced and the cost of world trade significantly increased.

78. His delegation hoped that others would recognize that, in agreeing to discuss claims to jurisdiction over resources in an economic zone, his delegation and others had sought to advance the prospects of a successful negotiation. His delegation was, of course, ready to discuss the question of the jurisdiction necessary to ensure the enjoyment by the coastal State of those resources and their protection. But he urged members not to insist on claims to other competences for coastal States not

directly related to the exercise of jurisdiction over resources, for such claims might prejudice the successful outcome of the Conference.

79. Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) said that the question of the economic zone was closely linked with the problems of the territorial sea and straits used for international navigation among others; such problems should be solved jointly, the interests of all States being taken into account.

80. The new concept of the economic zone had arisen as a result of the acceptance of the laws of a number of coastal States, and it should not be viewed as a rule of existing international law recognized by all States; it was not a question of *de lege lata*, but of *de lege ferenda*. It would be wrong to give the impression that the coastal States possessed economic zones and were making concessions to other States at the Conference. From the viewpoint of existing international law the future economic zone was an area of the high seas used by all States on an equal basis. The States which were now inclined to recognize an economic zone of 200 miles were in fact making a substantial concession to the coastal States concerned.

81. The rights of coastal States and those of all other States in the zone must be clearly defined. The extension of the rights of coastal States over a 200-mile economic zone had been justified by the need to guarantee their economic interest and improve the welfare of the peoples of developing coastal States. That was the reason why the zone had been called economic. Thus, in defining the régime for the economic zone, the Conference must allow that within the zone the coastal State would have sovereign rights for the purposes of the preservation, exploration and exploitation of living and mineral resources. But the legitimate rights and interests of other States, which had long used the ocean space concerned as the high seas, must also be guaranteed.

82. Demagogic statements had been made about the proposal that, if a coastal State did not take 100 per cent of the permissible annual catch of fish in the economic zone, the fishermen of other States must be allowed to catch the remainder. He wished to stress that any coastal State which could not take 100 per cent of the living resources in the economic zone would itself have an interest in allowing the vessels of other States to catch them, on the basis of authorization by the coastal State and making reasonable payments therefor. Indeed, if the coastal State did not permit such action, both it and the other States concerned would suffer, and the final result would be that the ever-increasing population of the world would not obtain the protein it so much needed, and the unused living resources would simply be lost. It was no coincidence that the representatives of many developing countries had stated that if the Conference recognized the sovereign rights of coastal States to explore and exploit the natural resources of a 200-mile economic zone, they would certainly not want to destroy the fishing industries of other States.

83. The rights of the coastal State in the economic zone must be exercised without prejudice to the rights of all other States with regard to the freedoms of navigation, overflight and the laying of cables and pipelines, and the freedom of scientific research, provided that such research was not connected with the exploration and exploitation of natural resources. That obligation of coastal States had been widely recognized in draft articles and statements. However, there was a tendency to extend the rights of the coastal State beyond its own economic interests to such areas as the prevention of pollution and the conduct of scientific research. Some delegations had even proposed that the coastal State should establish customs, fiscal, immigration and health controls in the economic zone. His

delegation wondered what would be left of the freedom of navigation if that were to happen. Under the pretext of exercising such controls, a coastal State might at any time detain a foreign vessel and reduce to nothing the freedom of navigation in the zone. That was the purpose of the attempts to replace the concept of the economic zone with such terms as "national zone" or "national sea". A clear distinction must be made between the régime of the territorial sea and that of the economic zone. The other legitimate interests of coastal States would be fully guaranteed by the rights they enjoyed in the territorial sea and the contiguous zone, which must not exceed 12 miles.

84. Mr. TSHERING (Bhutan) said that from some arguments advanced in favour of the creation of an exclusive economic zone it was clear that some wished to claim all of the resources within that zone. There was a race among States to claim the riches of the sea, and some coastal States were even claiming jurisdiction up to the continental margin, including the shelf slope and rise, as an extension or natural prolongation of their territory. But a continental shelf might extend as far as 900 miles outwards from the shore in some cases. If no agreement was reached soon on the major issues, there was a danger that the jurisdiction of the coastal State would grow rapidly, extending further and further into the ocean even beyond 200 miles, and endangering the freedom of the high seas and the common heritage of mankind.

85. His delegation agreed with the view that the 1958 Geneva Convention on the Continental Shelf had become obsolete because of technological advances, and that it was unjust towards many new and developing States. However, the concept of the so-called exclusive economic zone was not a just one, and was in fact designed to exclude others. It would have serious implications for the viability of the international area and machinery to be established. Petroleum and natural gas deposits were usually situated in the continental margins and would be exploited first of all in shallow waters. If national jurisdiction were to have wide limits, most of those deposits would be excluded from the international régime. The question was whether the benefits from such exploitation should be enjoyed exclusively by coastal States and by those capable of exploiting such resources under concessions, or by the international community as a whole. If the answer was that the international community should benefit from the common heritage, then the idea of exclusiveness must be rejected.

86. His country had a genuine interest in matters of sea-bed development and hoped that such development could be carried out in an orderly manner within the framework of an international régime, including strong international machinery. Any concept purporting to justify unilateral changes in the balance of oceanic rights and interests would violate the right of participation by land-locked and other geographically disadvantaged States. The exclusive economic zone would therefore be prejudicial to the rights and interests of other States. States with a long coastline—mainly the most advanced ones—would receive the lion's share, while the land-locked and disadvantaged States would receive nothing. Such a concept would make the rich countries richer and the poor countries poorer. The developing land-locked States were among the least developed countries and their special circumstances must be taken into consideration.

87. Mr. ABBADI (Deputy Secretary of the Committee) announced that Mali and Burundi wished to be added to the list of sponsors of document A/CONF.62/C.2/L.33 and that Haiti had decided to become a sponsor of document A/CONF.62/C.2/L.35.

The meeting rose at 1.05 p.m.

26th meeting

Monday, 5 August 1974, at 3.20 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

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

Exclusive economic zone beyond the territorial sea (continued)

[Agenda item 6]

1. Mr. VONAU (Poland), maintaining that the maximum breadth of the territorial sea should be 12 nautical miles, said that his delegation's position on the question of the rights of the coastal State beyond the territorial sea was flexible. On the question of fishing beyond the territorial sea, he urged delegations to be guided by the principle of mutual benefits and to take account of the facts of geography, economics and other relevant factors. The fishery resources of the world were distributed unevenly, and while a few coastal States might satisfy their demand for protein by engaging in coastal fishing, other geographically disadvantaged States, both developing and developed, could obtain the necessary protein only through distant-water fishing. Although it had been argued that the unilateral appropriation of fish resources in a wide coastal zone would serve the interests of all developing States, he pointed out that more than 50 developing coastal States could be regarded as geographically disadvantaged, while 19 developing States were land-locked. Granting unconditional rights in major fishing grounds to coastal States would mean giving geographically privileged States additional privileges under international law. He therefore hoped that the Conference would decide that it would not be consistent with the principle of equity recognized by contemporary international law if additional privileges were granted to a few States, while the rest of the world was deprived of an important part of its food supply. In seeking a reasonable solution that would safeguard the interests of the international community and the special needs of developing countries, account should be taken of the fact that the only justification for granting special rights was the existence of a special economic situation.

2. Poland, despite its distant-water fishing interests, was prepared to acknowledge that developing coastal States and States whose economy depended mainly on coastal fisheries should have the right to establish an economic zone in which they would be entitled to exercise special rights with respect to living marine resources. Those special rights should depend upon the fishing capacity of the coastal State, so that it could reserve for itself the exploitation of any specific stock it could utilize fully and part of the maximum allowable catch, corresponding to the capacity of its fishing fleet, of other stocks which it could not fully utilize. Other States would then have the right to exploit the unreserved fishery resources in the economic zone of the coastal State so that those resources would not be underfished. If other States were not given that right, there could be a decline in the world supply of protein from the sea, international conflicts could arise if distant-water fishermen were forced to seek access to the economic zone contrary to the regulations of the geographically privileged coastal State, and the cost of protein from the sea would rise, so that geographically disadvantaged States would be unable to secure adequate fish protein supplies.

3. His delegation would recognize the economic zone beyond the 12-mile territorial sea only if the right of innocent fishing within the zone was accepted. Where the coastal State entitled to establish an economic zone did not fish for some stocks

found in the zone or did not catch the maximum allowable yield of those stocks, nationals of other States should have the right of innocent fishing. Fishing within the economic zone would be regarded as innocent if it did not interfere with the exploitation of stocks which were fully or partially utilized by the coastal State by disturbing the ecological balance or by reducing the amount of the allowable catch reserved for the coastal State. The conditions for the exercise of the right of innocent fishing could be defined by regional fishery organizations composed of all interested States in the region and other States fishing there. Regional fishery organizations should also be competent to make recommendations in all matters connected with the conservation of living resources in the economic zone or beyond it. The Food and Agriculture Organization of the United Nations should co-ordinate the activities of the regional fishery organizations.

4. Mr. MAROTTA RANGEL (Brazil) reaffirmed his delegation's support for the 200-mile territorial sea, the most logical expression of the irreversible trend towards a new legal order for the oceans. However, in view of the wide acceptance of the concept of the exclusive economic zone and the patrimonial sea, his delegation was willing to consider those concepts, particularly as interpreted by African delegations to mean full sovereignty over the resources of the zone and sovereign rights for the purpose of exploration of the resources therein.

5. Referring to document A/CONF.62/L.4, he said he would wait for further provisions to be presented to complement and clarify the original draft, as he had some difficulty with it as it stood. One of the sponsors of the draft had stressed the difference between the rights of the coastal State in the economic zone and the rights of the same State in the continental shelf as expressed in the Geneva Convention on the Continental Shelf¹ and in article 19 of the draft. He failed to understand why the rights of the coastal State in the economic zone should be defined in narrower terms than those admitted in the continental shelf.

6. As it would be almost impossible to enumerate exhaustively the rights and duties of coastal States and third States in the economic zone, it should be clearly stated that the residual competence belonged to the coastal State in recognition of the priority of the interests of the coastal State. Under the draft articles coastal States would have, in the economic zone, the right to explore and exploit natural resources, rights, not specified, with regard to the preservation of the marine environment and the conduct of scientific research, and the right to authorize and regulate artificial installations. Third States, on the other hand, would enjoy freedom of navigation and overflight and the right to "other legitimate uses of the sea", including the laying of cables and pipelines. Each party should ensure that it did not interfere with the rights of the other party in exercising its rights. Although coastal States and third States thus seemed to be placed on an equal footing, doubts might arise over what rights derived to third States from the broad concepts of freedom of navigation and other legitimate uses of the sea. For example, would ships of third States, in the economic zone, have the right to engage in naval exercises, launch missiles or aircraft, load or unload cargo, embark or disembark persons, establish floating casinos or television stations? Those actions were not, in his opinion, permissible, and he raised the

¹United Nations, *Treaty Series*, vol. 499, p. 312.

question of who should decide that they did not fall under the broad category of legitimate uses of the sea.

7. The Conference must decide whether it would apply, in the economic zone, a régime of complete freedom, as had traditionally existed in the high seas, limited only by the obligation not to fish, mine, pollute or conduct research without authorization from the coastal State, or if it would create a régime in which foreign vessels would have the right only to free, unhindered and unimpeded transit. The Conference must also decide who was to enforce the provisions of the future convention in the economic zone, the coastal State or the international community which, under the existing decentralized system of international law, should mean every single State but in practice meant the big maritime Powers. The answers to those two questions would depend on whether the Conference decided that the economic zone should be recognized as part of the high seas in which coastal States would have only certain specified rights, or that it should be recognized as falling clearly under the sway of coastal States, with proper guarantees being given to third States. His delegation supported the second of those two approaches.

8. Mr. ZEGERS (Chile) said that the economic zone could be defined legally as a jurisdictional zone over which the coastal State exercised sovereign rights of a primarily economic nature, without prejudice to the freedoms of navigation and overflight, up to a distance of 200 miles. That definition was no longer an abstract concept; it had been supported in the general debate by more than 100 States.

9. Turning to document A/CONF.62/L.4, of which Chile was a sponsor, he observed that article 12 defined similar rights to those in existence for the continental shelf. Mention was made in article 14 of the freedoms of navigation and overflight and in article 15 of those of the laying of cables and pipelines; article 16 defined the discretionary power of the coastal State to authorize the emplacement and use of artificial islands and installations. Thus it could be seen that the competences or powers of the coastal State were all directly or indirectly related to its resources and their use and preservation, while the rights of third States were directly linked with the requirements of international communication.

10. Summing up the response in the Committee to the working paper, he observed that the representatives of the United Republic of Tanzania and Kenya, in accordance with the position of the majority of countries on the African continent, had interpreted the definition of the economic zone as being of a primarily "national" character, i.e. one unmistakably under the jurisdiction of the coastal State, in which the international community was entitled to exercise the three freedoms to which he had referred earlier. They had explained why the weakening of the legal concept of the economic zone and its equation with the theory of preferential rights were not acceptable to them. That position in fact coincided with the views expressed by delegations from other continents.

11. The representatives of Kenya and El Salvador had both been of the opinion that the definition in the working paper should be couched in stronger language. The representative of El Salvador had felt that the wording should be even closer to that in the 1958 Convention on the Continental Shelf. His delegation agreed that such wording—which emphasized the "spatial" aspect of the economic zone—was more favourable to the coastal State than the wording employed in the definition contained in the Declaration of the Organization of African Unity (A/CONF.62/33).

12. The representative of El Salvador had suggested at the 24th meeting the addition of the words "other economic uses of the sea" in article 12 relating to the competences of the coastal State. Although he could not speak on behalf of the other sponsors of the working paper, his delegation was amenable to their inclusion.

13. The representative of El Salvador, who wished to emphasize the national character of the economic zone, and the representative of the United States, who, on the contrary, favoured a more international definition, had referred to the problem of residual powers. The representative of El Salvador had suggested that such powers should be vested in the coastal State, while the representative of the United States preferred that they should be vested in the international community—which was tantamount to granting them to the major maritime Powers. His delegation preferred the wording proposed by the representative of El Salvador because it was more consistent with the legal nature of the zone and with the political and economic solutions it was intended to provide. However, if, as a basis for negotiation, agreement could be reached on the five areas of competence of the coastal State to which he had referred earlier and on the three freedoms or powers of third States, that would reduce the importance of the residual element and might facilitate consensus.

14. Many delegations had shown an eagerness to discuss fisheries problems in their statements on the economic zone, thereby raising the question of the relationship between the economic zone and the régime for the high seas. He agreed that the duties of the coastal State in the economic zone could not be discussed without taking into account the obligations of the great maritime Powers in the international area. Unrestricted freedom had led to the pollution of the high seas, the extinction or debilitation of many species of fish and the monopolization of scientific knowledge. It was therefore essential to discuss ways of subjecting such freedoms to international regulation.

15. In conclusion, he expressed regret at a statement heard at the preceding meeting, which had no bearing on the deliberations of the Conference and in which the representative concerned had referred, in terms which were not historically accurate, to events which had occurred a century earlier and for which, in any event, a solution had been found through diplomatic channels. Such statements fell outside the scope of the Conference and placed unnecessary obstacles in the path of international negotiation.

16. Mr. BEN ALEYA (Tunisia) said that, since the principle of the exclusive economic zone seemed to have been accepted by almost all delegations, the Conference should now consider exactly what was meant by the economic zone. His delegation supported the position taken by the Organization of African Unity as set forth in document A/CONF.62/33. Accordingly, he supported an exclusive economic zone in which the coastal State would have the exclusive right to exploit the renewable and non-renewable resources up to a limit of 200 miles, to participate in controlling pollution and to undertake scientific research. Pollution in the zone would affect primarily the interests of the coastal State, but would also be of concern to mankind as a whole; international aid should be arranged to enable many countries to fulfil their obligations with regard to controlling pollution. In the case of scientific research, the coastal State had the right to carry out basic or applied research in the zone, but other countries would have to obtain the prior consent of the coastal State for such research. Those countries should also establish scientific and technological co-operation with the coastal State, so that not only would the results of the research be made available to that State but it would also benefit from having some of its nationals directly involved in the research.

17. Tunisia had no land mineral or oil resources, and was concentrating on agriculture and fishing for development. The current 10-year development plan gave top priority to the development of fisheries, which would involve training personnel and establishing the necessary industrial, port and transport infrastructure. Fishing would take place in the economic zone which, in the case of Tunisia, could extend for only 120 nautical miles for geographical reasons. Although there was legislation in force to prevent any irrational exploitation of the fish

resources of that zone, considerable difficulties were experienced in trying to apply those laws to foreign fishing fleets. That was why his delegation attached vital importance to the concept of the exclusive economic zone.

18. His delegation was, however, aware of the concerns of land-locked and geographically disadvantaged developing countries and of the interests of the international community with regard to the peaceful uses of the sea, freedom of navigation and overflight, and freedom to lay pipelines and cables. With regard to the exploitation of the living resources of the sea by land-locked or geographically disadvantaged countries, he said that, in the case of developing African countries, the Organization of African Unity should provide the institutional framework for working out regional, subregional and bilateral agreements. In the case of developed countries, the right to engage in fishing in the economic zone should be linked to the transfer of technology and technical assistance. Care should also be taken to prevent over-fishing, as foreign fishing fleets did not always respect the need for rational exploitation.

19. Any hasty or insufficiently thought-out decision concerning the facilities to be granted to land-locked or geographically disadvantaged countries could lead to confusion in inter-State relations. For example, there was a question whether a coastal State which had exhausted its resources through bad management would be regarded as geographically disadvantaged, and whether a rich land-locked country should be entitled to share in the fish resources of coastal States which depended heavily on fishing, without any compensation to or control by the coastal State. Such matters must be resolved to avoid confusion.

20. His delegation could not accept the argument of under-fishing put forward by certain delegations in support of rights for third countries in the economic zone. The argument was fallacious: in the Mediterranean there were two categories of zones that could be regarded as over-fished, the first more severely than the second, so that the second zone could be considered to be under-fished by comparison with the first. Moreover, if the same argument was applied to land resources, excess food resources which certain countries enjoyed and sold at high prices to others should also be shared.

21. Turning to the question of the régime of islands, he said that island States should have the same rights as continental States. In the case of other islands, and where there was a problem of overlapping of economic zones, the median line should not necessarily be the only method of delimitation. Further study was needed in the case of islands and islets, which should not automatically have the same exclusive economic zones as island States. In that connexion, he referred to the 14-Power draft articles submitted in 1973 (A/9021 and Corr.1 and 3, vol. III, sect. 29) article XII of which set forth criteria for determining the economic zone of islands. He also drew attention to document A/CONF.62/C.2/L.28, sponsored by his delegation, which dealt with the delimitation of the exclusive economic zone between adjacent and opposite States.

22. Mr. ABDEL HAMID (Egypt) observed that although one of the main purposes of the United Nations was to achieve co-operation between nations by solving international problems of an economic nature, neither the United Nations nor any of its agencies had so far been able to meet the challenge which the problems of economic development currently posed. Consequently, and as a result of the growing scarcity of land-based resources and total exclusion of developing countries from the benefits of the exploration and exploitation of the seabed, those countries had turned to the resources of the sea areas adjacent to their territorial sea as vital sources for economic development and even survival. Their claims in that regard were based, first, on the traditional concept of sovereignty and the residual rights it entailed, and, second, on a legitimate concern to narrow the gap between developing and developed countries. No country could remain indifferent any

longer to the pressing needs of its population; consequently, whatever jurisdiction was eventually given to the coastal State, there should be safeguards to ensure that national programmes of development were not frustrated.

23. The concept of the exclusive economic zone or patrimonial sea, as embodied in the Declaration of Santo Domingo² and in that of the Organization of African Unity, was a natural outcome of the developing countries' philosophy and was designed to overcome the numerous shortcomings of the régime of the continental shelf as prescribed in the 1958 Geneva Convention.

24. Both the Organization of African Unity and the League of Arab States had issued Declarations in 1973 and 1974 in which they firmly supported the concept of an exclusive economic zone. It was gratifying to note that that concept was now accepted by an overwhelming majority of nations. Both approaches—the one based on sovereignty and the one based on the concept of the economic zone or patrimonial sea—had certain fundamentals in common. A precise determination of the rights and duties of coastal States and third parties, particularly in respect of the legitimate uses of the sea, was a first and important step in reaching a rapprochement between the two schools of thought.

25. In defining the concept of the economic zone, account must be taken of the interests of the international community and of the land-locked or geographically disadvantaged developing countries, which should be entitled to participate in the exploitation of the living resources of neighbouring economic zones on an equal footing with the nationals of coastal States. Such participation should be regulated by regional or bilateral agreements, in accordance with the new law of the sea.

26. The success of the future negotiations depended on the many details to be worked out. To endorse the concept and at the same time to seek to denude it of its substance was meaningless. If the countries of the third world found that their aspirations were not being considered in a spirit of understanding, their only option would be to take unilateral action.

27. Egyptian authorities exercised jurisdiction with regard to national security, customs and fiscal control, sanitation and immigration regulations in a 6-mile contiguous zone measured from the seaward limit of its 12-mile territorial sea. The right to exercise such jurisdiction derived from customary international law and had the positive effect of expediting transit navigation and safeguarding the security of the coastal State. Egypt believed that the functions exercised in the contiguous zone derived from the residual rights of the coastal State and were different in nature from the jurisdiction to be exercised in the exclusive economic zone, but that both areas were compatible. Thus, his delegation firmly believed that the concept of the contiguous zone should be adopted simultaneously with that of the 12-mile territorial sea. While his delegation was open to suggestions regarding the breadth of the ocean space over which jurisdiction would be exercised, it would insist on a differentiation between a State bordering an ocean and a State bordering a narrow semi-enclosed sea.

28. Mr. HARRY (Australia) said that his delegation welcomed the almost general acceptance of the concept of a 200-mile economic zone and looked forward to drafting articles defining the legal content of the concept.

29. The economic zone should not be regarded merely as a special zone of the high seas in which the coastal State had certain preferential or exclusive rights. In order for the concept to be meaningful, the coastal State must have sovereign rights in relation to the natural resources. It should also have a defined jurisdiction and specified rights to enforce international standards—and, in certain circumstances, to make supplementary regulations designed to prevent pollution of the marine

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

environment—and the jurisdiction necessary to ensure orderly and responsible scientific research. However, in the interests of the world community, the newly acquired rights of the coastal State should be accompanied by duties—for instance the duty to ensure the rational utilization of renewable resources and to respect the freedoms of navigation, overflight, and the laying of cables and pipelines. There should be a fairly direct connexion between the need to protect resources and the jurisdiction claimed. For example, there was a direct connexion between discharge from ships and protection of living resources.

30. His delegation believed that articles 10–18 of document A/CONF.62/L.4 formed a good framework for a chapter on the economic zone in the future convention. They contained a careful balance between the specified rights of the coastal State in respect of the exploitation of natural resources, the protection and preservation of the marine environment and the conduct of scientific research, on the one hand, and the rights of the international community to the other legitimate uses of the sea, on the other. Moreover, the articles did not prejudice the rights of a coastal State over the natural resources of its continental margin. There was a need for further articles on fisheries, the development of which could probably be assisted by the Australian-New Zealand paper now under revision.

31. Broadly speaking, the Australian approach to the management of fisheries in the economic zone was that a coastal State should have the right and duty to conserve and manage stocks of fish in the 200-mile zone. The coastal State should have the exclusive right to determine the allowable catch and the proportion of that catch, up to 100 per cent, which its own fishermen had the capacity to harvest. If a State's own fishermen were not in a position to take the full optimum yield, then the coastal State should have a duty to grant fishermen from other countries permission, under equitable conditions, to take the balance of the allowable catch. The extent to which preferences might be given to fishermen of countries which had traditionally fished in those waters or to neighbouring States would need careful definition.

32. The Nigerian articles in document A/CONF.62/C.2/L.21 reflected a systematic approach to the subject and should be of considerable use in future negotiations.

33. Mr. KORCHEVSKY (Byelorussian Soviet Socialist Republic) expressed sympathy to the delegation of Bangladesh in connexion with the recent catastrophic floods.

34. Byelorussia was a land-locked socialist State and attached special importance to the exploitation of the living and mineral resources of the world oceans. Other aspects of the law of the sea were also important, however, and the Conference could be successful only if it considered all problems of ocean space as a whole.

35. On the question of the economic zone, the position of his delegation was similar to that of many other States which were land-locked, had narrow shelves or short coastlines. Extending the rights of coastal States beyond the territorial sea would seriously interfere with the interests of geographically disadvantaged States. Some representatives of land-locked countries had already said that the concept of an exclusive economic zone was similar to the concept of the annexation or nationalization of the seas. He agreed with those who had claimed that developing coastal States which had unilaterally extended their national jurisdiction to wide zones had themselves undermined the principle of the common heritage of mankind adopted in General Assembly resolution 2749 (XXV), as their action reduced the size of the international area. Such unilateral action also increased the imbalance between the economic situation of coastal States and land-locked States, which was not in accordance with the objective of the United Nations to close the economic gap between different groups of States.

36. His delegation approached the matter from a position of principle to justify its view that the rights of coastal States over

200-mile economic zones should be subject to certain conditions to ensure that the legitimate interests of third States, including land-locked States, would be protected in the zone, together with the right of all members of the international community to freedom of navigation, freedom of laying cables and pipelines, freedom of overflight, freedom of scientific research, and freedom of access to the high seas and the international sea-bed area through straits used for international navigation. He opposed the view that coastal States should be entitled to unlimited rights in the economic zone, and agreed with other delegations who had interpreted sovereignty, not as absolute sovereignty, but as sovereignty with due respect for the rights of other States. Accordingly, he believed that coastal States should have sovereign rights only over the resources of the economic zone. He had no objection to proposals that the coastal State should have competence with respect to the mineral resources of the economic zone, the conservation and rational exploitation of the living resources, and the right to reserve for itself in the economic zone as much of the maximum allowable catch as it had the capacity to fish. The coastal State should not, however, disregard the interests of other members of the international community, particularly of the land-locked countries. Where a coastal State could not fully utilize the fish resources in its economic zone, it should grant access to its zone to nationals of other States, such as geographically disadvantaged States, States which had spent considerable amounts on research, exploration and evaluation of the living resources of the zone, and States which had traditionally fished in that zone.

37. His delegation fully supported the more detailed proposals made by the representatives of the Soviet Union, Bulgaria and other countries, which were fully in accordance with the interests of all States, particularly developing coastal and land-locked States.

38. Referring to the draft articles in document A/AC.138/SC.II/L.41 (*ibid.*, sect. 30) he noted that the sponsors had tried to provide for distribution of the living resources of the economic zone in accordance with the principle of regional solidarity. That approach did not take account of the interests of all land-locked States and other members of the international community, particularly those which were not able to resolve the fisheries problem on a regional or subregional level. He shared the views of those geographically disadvantaged States which felt that the question of the exploitation of the living resources of the economic zone should not be settled by bilateral, regional or subregional agreement, but should be resolved in a universal international instrument.

39. Mr. UPADHYAYA (Nepal) said that the concept of the economic zone had been born of an awareness on the part of the developing countries that they had to protect their interests against the onslaught of technically developed countries if they were to maintain their political independence and ensure economic progress.

40. The growing realization that many land-based resources would be exhausted within a short time had led scientists to look towards the sea as a potential source of food, energy and minerals for the whole world. Later, however, when it had been discovered that the living resources of the sea were diminishing fast and were not inexhaustible, it had been deemed necessary to arrange for the scientific management of marine resources. One school of thought, regarding the sea as *res communis*, had advocated entrusting such management to an international organization, while another, maintaining that the sea was *res nullius*, had suggested that exploration and exploitation should be left to whomever would undertake it. The developing countries were naturally alarmed by the second approach, which could further widen the gap between them and the developed countries. With the rise of nationalism and in their growing determination to defend political freedom, they had resolved to

examine past norms of international conduct with a view to setting the world on a right path of even development.

41. The concept of the economic zone was designed to protect developing countries from further exploitation. Nepal visualized the economic zone as a zone of resource jurisdiction, extending beyond the territorial sea up to a fixed limit, and comprising the water column, the sea-bed and subsoil. It should safeguard the interests of the developing countries, which would not be in a position to compete with the developed countries without it. In fixing the limits of the zone, full account should be taken of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof, beyond the Limits of National Jurisdiction (General Assembly resolution 2749 (XXV)) and also the report of the Secretary-General on the question of free access to the sea of land-locked countries.³ Since the economic zone would have the sole purpose of protecting the interests of all developing countries and would be created out of the area that belonged to all mankind, it should be under the common jurisdiction of all neighbouring States, whether coastal or land-locked. The modalities of such jurisdiction would, of course, be decided by the States themselves on a regional or subregional basis. All States exercising jurisdiction should also share in the responsibilities.

42. His delegation welcomed the nine-Power draft in document A/CONF.62/L.4 because it represented a co-operative effort between developed and developing countries. It was particularly reassuring to note that some developing countries no longer feared that the developed countries were intent on undermining feelings of solidarity between nations of the third world.

43. His delegation could not endorse article 12 of the nine-Power draft since it spoke of the sovereign rights of the coastal States over the zone, thus conflicting with the philosophy on which the Declaration of Principles was based. Furthermore, article 13, which provided for an outer limit of 200 miles, was totally incompatible with the concept of the common heritage of mankind. In the bracketed text following article 13, the obvious reluctance of the sponsors to accord land-locked and geographically disadvantaged States any worth-while rights augured ill for constructive negotiations. In short, the draft suffered from serious drawbacks, was regressive and, in his delegation's opinion, could not provide a basis for starting negotiations.

44. Mr. VAN DER ESSEN (Belgium) said that Belgian fishermen depended for their living on the traditional practice of fishing off the coast of other States. Although Belgium was a maritime country it was not oceanic—an important distinction, since coastal States were divided into a small group of oceanic States and a large group of maritime States most of which adjoined enclosed, semi-enclosed or narrow seas.

45. The concept of a 200-mile economic zone appeared attractive at first sight, because of its simplicity. However, such a formula did not take account of the interests of all States, and it was therefore unreasonable to try to apply it universally. Any attempt to do so would give rise to more problems than it would solve.

46. His country accepted the trend towards increased rights and obligations for the coastal State. Instead of the coastal State having absolute rights, however, it was better to emphasize the rational exploitation and conservation of fishery resources for the benefit of all. His delegation acknowledged that the coastal State should determine within reasonable limits the extent of a zone adjacent to its territorial sea where it would exercise fisheries jurisdiction enabling it, for example, to fix the maximum permissible catch, after consultation with the regional fisheries organizations.

47. His delegation agreed that the coastal State could reserve for ships flying its flag the maximum catch of which they were capable, but on the condition—which seemed equitable—that account was taken on a regional basis of the rights of States that traditionally fished in that zone, as well as the rights of land-locked States, of States or regions of States highly dependent upon fishing, and of developing States.

48. The freedom of fishing was one of the freedoms of the high seas, which had always begun beyond the territorial sea: other States therefore had, within the new zone, acquired rights which should be taken into account. That did not at all mean that they should be maintained in their entirety; changes could be made.

49. It would be for the coastal State to define those rights, after consultation with the parties concerned, preferably within a regional fisheries organization. Rules adopted by the coastal State should be mandatory for all foreign fishing vessels admitted into the zone, and the coastal State should have the right to inspect such vessels and to bring action in the event of an infringement of its rules.

50. Furthermore, the role of the regional fisheries organizations should be strengthened: they should be able to take decisions by a specified majority, not unanimously. In addition, their decisions should be mandatory for all States fishing within the region, possibly under international control effected by the regional organization.

51. The competences of the coastal States and of the regional organizations might come under an international fisheries court. Arrangements for the compulsory settlement of disputes would complete the machinery—which his delegation considered to be well-balanced and harmonious.

52. In conclusion, he stressed that his delegation would not accept an exclusive economic zone of 200 miles, but would agree to increased competences for the coastal State, particularly with regard to fishing, provided that such competences were exercised in the interests of all and organized regionally for that purpose.

Mr. Aguilar (Venezuela) took the chair.

53. Mr. PLAKA (Albania) said that the question of the exclusive economic zone was one of the most crucial issues before the Conference and was part of the struggle being waged by the countries of Asia, Africa, and Latin America and other sovereign Powers to safeguard their national independence and achieve economic and social development.

54. It was an irrefutable fact that the resources in the ocean space adjacent to coastal States and the riches of the high seas had been pillaged, and were still being pillaged, by imperialist, colonialist Powers. The main culprits were the two super-Powers, which wished to impose inequitable economic relations on the world to the detriment of the interests of the developing countries, monopolize raw materials and fix world prices for them with a view to controlling the world economy. Furthermore, zones adjacent to the coasts of sovereign countries were often used as naval exercise areas or centres for massing the navies of the super-Powers, which had created permanent tension in the seas and oceans particularly through their policy of hegemony.

55. In those circumstances, sovereign coastal States had the right to adopt appropriate measures with a view to defending their sovereign economic rights over the resources in their marine zone. The coastal State had the right to establish an exclusive economic zone or an exclusive fishery zone of reasonable extent, with due respect for the rights of international shipping and the interests of neighbouring countries. His delegation shared the point of view expressed by a large majority of delegations that the economic zone should extend to a limit of 200 nautical miles from the baselines. International navigation and overflight should not interfere with the sovereign rights of the coastal State in that zone.

³ Document A/AC.138/37 and Corr.1 and 2 of 11 June 1971.

56. The creation of such a zone, based on the distance criterion, would represent an equitable solution for all countries, since the depth and exploitability criteria were no longer adequate. Coastal States should retain their sovereign rights over the resources of their continental shelf even when the continental margin lay beyond the 200-mile limit; the outside limits of the shelf itself would be established by regional agreement.
57. His country supported those coastal States which had extended their territorial waters to 200 miles and exercised economic and political sovereignty over that zone.
58. The coastal State should exercise permanent sovereignty and jurisdiction over all natural resources in the sea, sea-bed and subsoil of the economic zone adjacent to its coast. Most participating States recognized the right of the coastal State to establish such a zone, but the United States of America and the Soviet Union obstinately opposed that general trend. Their obstructive attitude was quite unjustified. The establishment of an exclusive economic zone would not prejudice their national rights; on the contrary, they would be among the countries most favoured by the establishment of such a zone. Their attitude stemmed from their determination to continue their expansionist policy in the seas and oceans and to go on plundering the living resources of sovereign coastal States on the pretext that the sea was a *res nullius* and that freedom of navigation and freedom of fishing were rights, or by calling for the application in the exclusive economic zone of so-called preferential rights, maximum exploitation and international conservation of living and other resources, or talking sentimentally about the "balance of interests" and "freedom of research".
59. The argument of preferential rights and maximum exploitation put forward by the United States and the Soviet Union would reduce the sovereign rights of coastal States and enable the fishing fleets of the two super-Powers to pillage the major part of their fishery resources. The "maximum exploitation" argument had the same aim. Conservation of such resources could no longer be used as a pretext for limiting the rights of coastal States. The coastal State should have the exclusive right to lay down rules for the protection and management of the zone, and to take anti-pollution measures and control fishing methods. Scientific research in the exclusive economic zone should be subject to the prior consent of the coastal State, particularly since the two super-Powers used humanitarian pretexts to ensure their military presence in marine zones adjacent to sovereign States and to gather military information concerning those countries or the subsoil of the zone. Furthermore, their evil aim of using their science and technology as an instrument of their neo-colonialist policy must also be borne in mind.
60. In order to maintain their privileged position, the two super-Powers had resorted to economic pressure and threats to sovereign countries, at the Conference and elsewhere, in an attempt to make those countries back down on the important issues before the Conference and fall in with their imperialist designs, so as to ensure the failure of the Conference. The coastal States should guard against efforts by the United States and the Soviet Union to internationalize the exclusive economic zone and to substitute a pitifully reduced régime of competences for the sovereign rights and exclusive national jurisdiction of coastal States in order to perpetuate the infamous freedom of fishing in the zone.
61. His delegation emphasized that the concept of the exclusive economic zone should be embodied in concrete terms in the convention to be adopted to ensure that coastal States would have international legal protection of their sovereign rights in the marine space adjacent to their coasts. Coastal States should share the resources of the zone with land-locked and other geographically disadvantaged countries, on a reasonable basis. Precise provisions should be formulated to defend the legitimate rights of such countries to exploit, on the basis of negotiated agreements, the resources in the exclusive economic zone of a region, with due respect for the interests and sovereign rights of coastal States. The convention should contain precise regulations prohibiting the massing of foreign fleets and manoeuvres by warships in their zones.
62. The countries of Asia, Africa and Latin America and other sovereign States should strengthen their solidarity in order to achieve those results and defeat the concerted efforts of the two super-Powers to impose their domination. That solidarity would enable them to defend the legitimate interests of all peace-loving peoples and countries against the super-Powers' policy of aggression and enslavement.
63. His delegation would support any proposals to codify the rules of international law in a convention that would strengthen the concept of the exclusive economic zone or patrimonial sea.
64. Mr. DJALAL (Indonesia) outlined the reasons for his country's support of the concepts of the economic zone and the patrimonial sea. First, it considered that the ancient freedom of the seas applied only to those who possessed the capacity to deplete the resources of the seas adjacent to other countries. Secondly, the resources in the economic zone might provide the answer to the development needs of developing countries which had long been the victims of economic exploitation. Thirdly, from the point of view of adjacency, coastal States had a better right to the resources in the zone than distant countries. The problem of overlapping economic zones was a question of delimitation which in no way negated the concept of the economic zone. Fourthly, his delegation did not agree with the view that the economic zone would result in under-exploitation of resources. Methods of co-operation could be devised to enable distant countries to use resources not yet fully exploited by the coastal State.
65. With regard to the legal régime in the exclusive economic zone, he noted that in the Declaration of the Organization of African Unity, the proposals submitted by 14 African countries to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (A/9021 and Corr.1 and 3, vol. III sect. 29), the Declaration of Santo Domingo, document A/CONF.62/L.4 and the statements of certain delegations at the Conference, different wordings had been used to define the nature of the coastal State's rights in the exclusive economic zone.
66. Since the protection of the marine environment and scientific research were closely connected with the exploration and exploitation of natural resources, the rights connected with them should be sovereign rights, on the same footing as sovereignty over natural resources.
67. The concept of "sovereignty" or "sovereign rights" should be clearly defined in order to facilitate the correct choice of words. His delegation considered that if the term "sovereignty" was used to denote the nature of the right of the coastal State over its territorial sea, it might be preferable to use the words "sovereign rights" in relation to the economic zone. However, his delegation could support the terminology used in the Declaration of the Organization of African Unity, namely, "sovereignty" or "permanent sovereignty" of the coastal State over the resources of the economic zone, or the terminology used in the Declaration of Santo Domingo namely, "sovereign rights".
68. The view had been expressed that there was a difference between the nature of the coastal State's rights over resources, on the one hand, and over the conduct of scientific research and the protection of the marine environment, on the other, in the economic zone. His delegation considered that such a distinction was not justified and that those rights should be parallel.
69. Whatever terminology was ultimately agreed upon, it was the view of his delegation that, first, the coastal State alone

should have competence in the form of "permanent sovereignty" or "sovereignty" over resources, or "sovereign rights" for the purpose of exploration and exploitation of those resources in its exclusive economic zone; secondly, the coastal State alone should have competence which might be classified as "sovereign rights" or "exclusive jurisdiction" with regard to the regulation of scientific research and control over the marine environment of the exclusive economic zone. Such provisions should not prejudice any arrangement which a coastal State, in exercise of its sovereignty or its sovereign rights over resources, might make with other countries or international organizations in order to obtain maximum benefits from its economic zone.

70. His delegation was sympathetic to the position of the land-locked and geographically disadvantaged countries in relation to the exclusive economic zone of coastal States. Referring to remarks made at the 25th meeting by the representative of Malaysia, who had seemed to question the right of an archipelagic State to have an economic zone, he emphasized that the concepts of the economic zone and the archipelagic State were of a different nature and were not interchangeable. With or without the archipelagic concept, the area which would fall within the economic zone of an archipelagic State would necessarily cover all areas within the archipelagic waters.

71. Mr. STEWART (Guyana) expressed his sympathy to the people of Bangladesh for the tragic disaster which they had suffered.

72. His Government was already on record as supporting and undertaking to promote the doctrine of the patrimonial sea or exclusive economic zone of coastal State jurisdiction. Its position was based on the conviction that that doctrine offered the most viable compromise likely to emerge from the current clash of competing claims in that it accommodated the economic interests of developing coastal States and the vital strategic and security interests of the developed States while taking account of the interests of geographically disadvantaged States and the international community.

73. His delegation viewed with concern and regret the growing propensity to disturb the consensus emerging around that doctrine by the introduction of outrageous qualifications which were postulated as prior conditions to the acceptance of that doctrine by certain States. The most untenable of those qualifications pertained to the recognition of a right of access by other States to the living resources in the exclusive economic zone of a coastal State which might temporarily be incapable of fully exploiting those resources.

74. His delegation categorically rejected such qualifications for three principal reasons. First, they incorporated an unacceptable bias in favour of technologically advanced States. Any arrangement that tied control of fisheries by the coastal State to indigenous exploitative capability discriminated heavily in favour of technologically advanced States, with probable adverse consequences for the rapid transfer of technology. Secondly, such qualifications were predicated on certain scientifically unverified assumptions such as the concept of "maximum sustainable yield", and that of the "under-exploitation of a species" which was thought to result in the loss of valuable protein resources of the world community. In the view of his delegation, it was virtually impossible to determine with scientific exactitude the maximum sustainable yield and, *a fortiori*, the optimum catch of a particular stock. Furthermore, yields from the vast majority of marine species were limited by natural conditions over which man had little or no control, thus rendering only a few of the species valuable to man amenable to conservation practices that were economically viable. Thirdly, those qualifications ignored the vital economic component of opportunity costs, which should of necessity enter into any determination of the competence of the coastal State in the management of the living resources in its adjacent ocean space. In implementing conservation measures, many States, including his own, sacrificed projects of value to them, such as

the establishment of industrial complexes that emitted pollutants or the implementation of hydroelectric schemes for the generation of cheap power, so that living resources could survive and reproduce. It was reasonable therefore that those States which, by a conscious policy decision, had incurred such opportunity costs should have the determining voice in the exploitation of such resources.

75. His delegation was opposed to any international arrangements for the management of coastal fisheries along the lines of existing fisheries organizations. Those organizations, which were *de facto* exclusionary in nature, represented a convergence of exaggerated unilateral claims to vast competences regarding the exploitation of fisheries in ocean space. Their record of achievement in the management and conservation of fisheries demonstrated their inadequacy in the light of contemporary requirements, and his delegation considered that their structure and manner of functioning were not worthy of emulation.

76. Mr. LUPINACCI (Uruguay) reiterated the view expressed by his delegation at the 30th plenary meeting that the concept of a plurality of territorial sea régimes and that of an economic zone, or patrimonial sea, with broad sovereign powers for the coastal State had much in common. The first feature common to the two positions was the unitary and indivisible character of the zone up to 200 miles, whether it was a question of the territorial sea subject to a plurality of régimes or the territorial sea of 12 miles intrinsically linked to the economic zone up to 200 miles, the common denominator being the principles of the sovereignty of coastal States over the whole, though the limits to the exercise of that sovereignty might vary. The second common feature was the spatial character of the two concepts relating to the belt of adjacent sea. In the two cases, the spatial scope of the validity and effective application of the regulations formulated by the coastal State extended to the outer limit of the territorial sea subject to a plurality of régimes or of the economic zone respectively. In that connexion, his delegation did not agree with the definition in article 12 of document A/CONF.62/L.4. The coastal State should exercise control over the zone itself and not merely the resources in it.

77. He endorsed the view expressed at the 23rd meeting by the representative of the United Republic of Tanzania that the 200-mile limit applied to fishermen and not to fish. Thus conceived, the economic zone was not part of the high seas. His delegation shared the view expressed at the same meeting by the representative of Kenya that, instead of enumerating the rights of the coastal State in the economic zone, the important point was to establish clearly what rights the international community would have in that zone.

78. It was agreed that international communications should be kept safe and expeditious. That was the basic reason for the distinction between the régimes applicable in the broad areas of maritime sovereignty: to establish beyond a narrow belt of innocent passage a broad sector where freedom of navigation and overflight would be recognized. That placed an express limitation on sovereignty and entailed an inversion of principles, since when it was a question of international communication the principle of freedom took precedence over that of sovereignty. Of course, there was no absolute freedom, just as there was no absolute sovereignty. The rights of States in respect of freedom of navigation and overflight and the laying of pipelines and submarine cables were subject to limitations deriving from the exercise by the coastal State of its rights with regard to the exploration, conservation and exploitation of resources, the protection and preservation of the environment, scientific research and the construction and emplacement of installations. With the exception of the aforementioned freedoms, the coastal State should exercise sovereignty over all uses of the sea in the zone.

79. The term "economic zone" or "patrimonial sea" embraced different concepts, some of which sought to deprive it of some of its meaning to the extent of virtually equating it with the concept of preferential rights. The best means of protecting the legitimate rights and interests of the coastal State against that risk was to apply the principle of sovereignty with regard to residual competences. The proposals of certain Powers to reduce to a minimum the competences of the coastal State beyond the 12-mile limit and to deny its sovereignty in the 200-mile zone implied that they suspected that developing countries lacked a sense of responsibility. His delegation shared the view, expressed by the representative of the United Republic of Tanzania, that those who made those veiled accusations had used the freedom of the sea in an irresponsible manner to impose their domination over the seas or to exploit their resources at random.

80. Sovereignty implied rights and obligations. States such as Uruguay which had proclaimed their sovereignty over zones up to 200 miles were prepared to assume the obligations devolving from that sovereignty, particularly with regard to the protection of the marine environment, the preservation and rational exploitation of species, and the promotion of scientific research subject to the right to participate in and have access to the results of such research. They were also prepared to guarantee the legitimate and normal exercise of the freedom of navigation and overflight, and to assume responsibility for any unjustified damage to vessels of third States that might result from their activities.

✓ 81. Mr. FARES (Democratic Yemen) said that the seas adjacent to the coast of his country were rich in living resources that were being depleted without concern for the need to protect them.

82. His delegation believed that coastal States should have full sovereign rights over the seas adjacent to their coasts for the purpose of regulating the exploitation and conservation of their resources. It firmly supported the concept of the full sovereign rights and exclusive jurisdiction of coastal States over their economic zones up to 200 miles measured from the appropriate baselines, and was pleased to note the growing recognition of the concept by a large majority of States, particularly developing States. It could not accept the argument that the concept of the exclusive economic zone would leave little for the common heritage of mankind, believing that the two concepts were complementary.

83. It was unjust for a few advanced countries to exploit the seas for their own benefit: they should provide the assistance needed by the coastal States to utilize the resources of the sea, which offered an important means of remedying the poverty and backwardness of many countries of the third world. That did not mean, however, that land-locked and other geographically disadvantaged States would be deprived of the benefits to be derived from exploiting the living resources in the economic zone. The developing coastal States had always demonstrated their readiness to give special consideration to the interests and needs of those States.

84. On the other hand, in their desire for a package deal, the developed maritime Powers were trying to impose restrictions of all kinds in order to render the concept meaningless. Instead of trying to assist the developing countries, they used their economic, scientific and political power to maintain the *status quo*, providing only charitable assistance, thus helping to widen the ever-increasing gap between them and the developing countries.

85. His delegation subscribed to the following views on the exclusive economic zone.

86. First, coastal States should maintain exclusive jurisdiction over the zone up to a distance of 200 miles in order to protect their legitimate rights over the renewable and non-

renewable resources, subject to permitting freedom of navigation, overflight and the laying of cables and pipelines.

87. Secondly, such jurisdiction would allow coastal States to regulate and control scientific research, taking into account their need to train personnel, to participate in such research and to have access to the results thereof. It would also permit the protection of the marine environment, the prevention of pollution and the preservation of resources.

88. Thirdly, for the purpose of delimitation between opposite or adjacent States, the median line should be used in the absence of any clear agreement.

89. Fourthly, coastal States should have the right to establish a contiguous zone bordering the territorial sea for customs and health control and other such purposes.

90. Fifthly, all the foregoing principles should be applied to the islands of a coastal State, since they formed an integral part of the territory of that State.

✓ 91. Mr. ROBLEH (Somalia) said that near anarchy reigned in the seas and oceans and, but for General Assembly resolution 2574 D (XXIV), which had imposed a moratorium on all activities in the international area, the world would today be witness to a wild scramble by a few highly developed States for the acquisition of ocean space beyond the limits of national jurisdiction.

92. His delegation fully endorsed the reasons underlying the doctrine of the exclusive economic zone, the principal aim of which was to introduce social and economic justice into the law of the sea, which had hitherto greatly favoured the major maritime Powers. However, the Committee had heard a multiplicity of different interpretations of the economic zone concept: for some, it meant control by the coastal State over all the resources of the sea for the purposes of exploration and exploitation.

93. The draft articles submitted by Nigeria (A/CONF.62/C.2/L.21) would endow the coastal State with more competence over the economic zone than any other proposal. Under the Nigerian proposal, in addition to coastal State jurisdiction over resources, powers would be conferred upon the coastal State that were usually exercised under the régime of the contiguous zone.

94. Certain late converts to the doctrine of the exclusive economic zone would accept it only if they were guaranteed—under the guise of so-called "maximum utilization of available living resources"—the right or privilege of access to the fishery zones of developing coastal States. Other delegations would accept the doctrine only with the proviso that unfettered freedom of scientific research was permitted within national ocean space, subject to prior notification but without the need for the consent of the coastal State concerned. Others again maintained that the economic zone was an integral part of the high seas. Yet the doctrine of the freedom of the open sea had never been an absolute one: rules for the exercise of jurisdiction over vessels at sea had been universally adopted so as to avert complete anarchy. In any case, the concept must be radically revised in the light of recent developments concerning the rights of coastal States over the continental shelf and adjacent underwater areas. It could hardly be argued that the frantic search for oil on the sea-bed had not unavoidably restricted the traditional freedom of the high seas.

95. In his delegation's view, the most logical régime for the national maritime zone was that of the territorial sea rather than that of the exclusive economic zone. The interests of developing States would best be served by a territorial sea of not more than 200 miles. Those who unreasonably opposed the territorial sea concept did so not because they believed that freedom of navigation, international trade and communications would be hampered, but because they feared a loss of their strategic freedom. It was not the exclusive economic zone idea but only the territorial sea doctrine that could effectively

meet the serious challenge of distant-water fishing fleets. The major naval Powers would rather endorse a diluted version of the exclusive economic zone than the territorial sea doctrine, since the adoption of the latter would jeopardize the military and strategic interests of a number of States or alliances by the banning of military installations within the maritime zones of coastal States.

96. The so-called "package deal" was an undisguised invitation to developing coastal States to sign away their territorial sovereignty in exchange for lesser rights. His delegation categorically rejected it.

97. Mr. MOLODTSOV (Union of Soviet Socialist Republics), speaking in exercise of the right of reply, said that at the 24th meeting of the Committee one delegation had again sought to sow the seeds of discord and suspicion among participants in the Conference. It had repeated oft-refuted stories about the so-called plundering of the developing countries by a certain "super-Power".

98. According to the delegation in question, the proposal to permit fishing by foreign vessels in an economic zone in which the coastal State did not take 100 per cent of the permissible catch was a manoeuvre directed against the concept of the economic zone. It was well known, however, that a number of developing countries which strongly supported the concept of the economic zone held similar views, which they based on the need to exploit living resources in a rational manner. That fact clearly showed that the statement by the delegation in question was demagogic in nature.

99. The same delegation was particularly displeased at the fact that a number of socialist countries, whose defence and security also depended on the type of régime that would apply to straits used in international navigation, were determined to uphold firmly their legitimate interests in those extremely important maritime areas. However, countries whose peoples had suffered incalculable human losses in defending their freedom and independence would not yield their vital interests to those who sought to establish one-sided control and domination over those zones. Demagogues pursuing hegemonistic aims would not succeed in misleading anyone in those matters. Nor could his country forget the aggressive plans of imperialism or its international duty in so far as the victims of imperialism and aggression were concerned.

100. At the current meeting, another delegation had also crudely distorted the policy of the USSR, borrowing its "ideas" from the same source. The representative of that delegation acted in accordance with the principle of "monkey see, monkey do". Therefore, having rebuked the inspirers of those malicious statements, he had no need to reply to their followers.

101. Mr. PLAKA (Albania), speaking in exercise of the right of reply, said that the USSR representative had provided clear proof of the chauvinistic policy followed by the Soviet Union since the betrayal of Marxism-Leninism: it was establishing links with its satellites on the basis of principles followed by a large chauvinistic Power. The statement of the representative in question had clearly demonstrated the imperialist and expansionist policy followed by the USSR, based on the domination and exploitation of man.

102. In his own statement earlier in the meeting, he had asked whether the USSR recognized the sovereign rights of coastal

States over the resources of the sea adjacent to their coast up to a 200-mile limit. Yet the USSR representative had not replied. Furthermore, representatives of both the Ukrainian SSR and the Byelorussian SSR had spoken in favour of the policy of limited sovereignty of coastal States.

103. He had asked the USSR representative to declare that the Soviet Union was ready to withdraw its warships from the maritime space of other States. The reasons why it would not do so were clear: it kept them there for the purpose of dominating other peoples.

104. He had also asked whether the USSR recognized the sovereign rights of coastal States in respect of scientific research. However, the Ukrainian representative had demanded freedom of scientific research. It was clear what that freedom entailed—freedom for the USSR to send warships and reconnaissance vessels in order to obtain military information and establish military and economic control over other States.

105. If the USSR really clung to worthy principles, why had the Ukrainian representative stated that the USSR wanted to impose a package deal on other States?

106. The USSR representative had said that the manoeuvres of the imperialists had not been forgotten; that was a statement with which he fully agreed.

107. Finally, he had asked the USSR whether it was prepared to accept the concept of the exclusive economic zone. If it did, it should say so.

108. Mr. LING Ching (China), replying to the representative of the Soviet Union, said that the facts spoke for themselves. The Soviet Union had large numbers of fishing fleets engaged in plundering the fishery resources of other countries. Furthermore, a number of countries had for that reason lodged protests with the Soviet Union. The Chinese delegation affirmed that, within the economic zone, the coastal State should exercise full sovereignty; there was no reason why it should be obliged to permit other States to fish in its economic zone.

109. As to the question of the free passage of warships through straits used for international navigation, the Soviet Union showed utter contempt for the sovereignty of coastal States and pursued an imperialist strategy to achieve world hegemony. Why should warships be permitted freedom of navigation through straits without the prior notification and authorization of the coastal State? Moreover, why had some countries declared their own regions to be zones of peace? Was it not precisely because warships of the super-Powers were traversing the oceans of the world, threatening the security of the countries of those regions?

110. Yet in 1958, the Soviet Union itself had advocated that the passage of warships through straits should be permitted only upon prior notification and authorization. Why, then, 10 years later, had it completely reversed its position? The reason was that it had now built up a powerful navy which permitted it to pursue its imperialist policies.

111. His delegation resolutely opposed the use of the principle of the free passage of warships through straits as a precondition for a package deal.

The meeting rose at 6.20 p.m.

27th meeting

Monday, 5 August 1974, at 8.50 p.m.

Chairman: Mr. Andr s AGUILAR (Venezuela).

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

Exclusive economic zone beyond the territorial sea (continued)

[Agenda item 6]

1. Mr. CHAO (Singapore), summing up his delegation's views on the question of an economic zone for coastal States, said the economic zone approach was not the only practical approach, nor was it the most equitable. The defect of existing law under the four 1958 Conventions was that advantages were conferred upon a small minority of States; the economic zone approach merely sought to enlarge the number of States enjoying those advantages, and in some cases would inflict harm upon land-locked and other geographically disadvantaged States. The only just approach would be to allow coastal States to claim a territorial sea of up to 12 nautical miles beyond which the whole marine area should be under the control and jurisdiction of an International Sea-Bed Authority. The Authority should exploit the non-living resources of the area for all mankind and should lay down rules and regulations governing the exploitation of living resources by States. That approach would give real effect to the principle of the common heritage of mankind. His delegation also favoured the regional zone approach whereby three or more adjoining or opposite States would be entitled to establish a regional or subregional zone. Adjacent and opposite States would also be entitled to join the group, although no State should be part of more than one such zone. In that way no State could be excluded from a regional or subregional zone. The zone should lie within the geographical confines of each continent concerned. That approach would secure justice for all States and would provide a real opportunity for regional co-operation and understanding.
2. If there was to be a coastal State economic zone, his delegation's acceptance of it would be subject to two conditions: first, there must be adequate provisions in the convention itself to safeguard the rights and interests of land-locked and other geographically disadvantaged States. Secondly, the breadth of the economic zone should not prejudice the economic viability of the international area. In determining the breadth, the report of the Secretary-General on the economic significance of the various limits proposed for national jurisdiction¹ should be constantly borne in mind.
3. The approach taken by Nigeria in document A/CONF.62/C.2/L.21 was very constructive. Nevertheless, the provisions of article 1, paragraph 2 (d) were reminiscent of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.² No cogent reasons had been put forward to justify granting coastal States further jurisdiction in the economic zone in relation to the prevention and punishment of infringement of customs, fiscal, immigration and sanitary regulations. There was no reason why those functions could not be performed effectively within the 12-nautical-mile territorial sea. He urged the Conference not to transform the economic zone into a territorial sea.
4. The new 12-mile limit for the territorial sea would do away with the need for a contiguous zone except where coastal States did not claim the 12-mile territorial sea. His delegation com-

mended the draft article on the contiguous zone contained in document A/CONF.62/C.2/L.27.

5. Although article 3, paragraph 2 of the Nigerian draft would oblige coastal States to enforce applicable international navigation safety standards, there was no mention of international standards covering the duty of the coastal States to regulate and preserve the marine environment and to prevent pollution. He hoped that the Nigerian delegation would be prepared to reconsider that question. Although there was no provision to safeguard the rights and interests of land-locked and other geographically disadvantaged States, his delegation had been assured by the Nigerian delegation that a revision would be forthcoming.

6. Document A/CONF.62/L.4 contained some of the most interesting ideas before the Conference. Nevertheless, his delegation looked forward to the inclusion of articles recognizing the rights *de jure* and interests of land-locked and geographically disadvantaged States. He hoped the sponsors of the draft would also consider the need to accommodate the interests of neighbouring States within an archipelago in their future deliberations. His delegation was unable to accept article 19 of the draft.

7. His delegation hoped the Conference would not repeat the mistake of the 1958 Conference on the Law of the Sea, which had carved up the most valuable areas of the sea-bed for a number of advantaged coastal States without any regard for the rights and interests of the less advantaged States.

8. Mr. BOTHA (South Africa) said that his delegation fully supported the concept of an exclusive economic zone extending to a maximum distance of 200 nautical miles measured from the baselines used for calculating the 12-mile territorial sea. Within that zone, the coastal State should exercise exclusive jurisdiction over the renewable living resources of the sea and sea-bed and have sovereignty over the non-renewable resources of the continental shelf, the sea-bed and the subsoil thereof.

9. The coastal State should have the exclusive rights to exploit the living resources within the economic zone up to the maximum sustainable yield. If, however, the coastal State did not possess the capability to harvest the maximum sustainable yield, it should, until it had that capacity, share with other States the exploitation of the resources in order to ensure that available stocks were fully utilized. Provisions should be made for suitable financial reward to the coastal State for the participation of others in the exploitation of the living resources of the zone. Such participation could be arranged through existing international fisheries conventions or on a bilateral basis. Detailed arrangements between the coastal State and its land-locked neighbours should be spelled out in bilateral agreements between the countries concerned.

10. In addition to its exclusive rights to exploit the living resources of the zone, the coastal State should also have exclusive jurisdiction, including enforcement powers, with regard to the proper conservation, under coastal State laws and regulations, of the living resources within the zone. Only then would the coastal State be in a position to conserve those resources effectively.

11. The South African delegation supported those proposals which envisaged continued coastal State sovereignty over the continental shelf in cases where it extended beyond the

¹ Document A/AC.138/87 and Corr.1 of 4 June 1973.

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

200-nautical-mile limit proposed as the outer limit of the economic zone.

12. Coastal State jurisdiction within the economic zone should also embrace the right to prevent and combat all forms of marine pollution. Effective pollution controls could be achieved only by way of binding international standards and criteria coupled with enforcement powers. Flag States and port States had obvious responsibilities in that regard, and should be granted suitable powers of enforcement. At the same time, however, it was essential that strong and effective enforcement powers be exercised by coastal States.

13. The South African delegation supported the principle of maximum freedom of scientific research, excluding, of course, research of a military and proprietary character. Within the territorial sea, however, scientific research should be subject to the prior consent of the coastal State, which should, if it so desired, be able to participate in the research and have access to the results. Within the economic zone, research should be allowed subject to the control of the coastal State and with the right of the latter to participate in the research and have access to the results.

14. In addition to its rights within the economic zone, the coastal State should also have certain defined obligations and duties, namely, the obligation not to prevent or interfere with the laying of submarine cables and pipelines, and to respect and preserve the traditional freedom of navigation and overflight in the case of straits used for international navigation.

15. Mr. SOTH (Khmer Republic) said that his delegation was very much in favour of the creation of an exclusive economic zone of not more than 188 nautical miles measured from the outer limit of a 12-mile territorial sea. The coastal State should enjoy sovereign rights over the natural resources of the sea-bed and ocean floor, as well as of the superjacent waters. Such sovereignty was subject to limitations imposed in the interests of the international community and included the obligation of the coastal State to respect the traditional freedoms of navigation, overflight, and the laying of submarine cables and pipelines. Those freedoms should not be abused in any way which might affect the economic character of the zone. For example, foreign fishing vessels should not be permitted to use the pretext of the freedom of navigation to engage in clandestine fishing activities in the zone. Naval manoeuvres which might disturb the living resources of the zone should be prohibited. The exercise of the other freedoms should not be prejudicial to the interests of the coastal State. It was normal for the coastal State to intervene in cases where poorly maintained pipelines threatened to pollute the marine environment or destroy the living resources of the area.

16. His delegation maintained that the right of innocent passage should not be recognized for warships of any type, tankers and other vessels transporting polluting, harmful or dangerous substances, and fishing vessels. The latter should be denied the right of innocent passage because of their tendency to fish clandestinely in the territorial waters of the coastal State. All such vessels must remain outside the territorial sea. Merchant ships must not use their right of innocent passage for purposes other than trade.

17. The legal régimes of the contiguous zone and the continental shelf should not be retained in the new law of the sea. A large number of States, including many signatories of the 1958 Geneva Convention, in extending their territorial seas to a breadth of 12 nautical miles or more, had chosen to ignore the contiguous zone. The retention of that zone, which the Geneva Convention had viewed as part of the high seas, would only complicate matters. Placing the contiguous zone between the territorial sea and the economic zone would result in a belt of high seas between two other zones which were not part of the high seas. On the other hand, a contiguous zone situated at the outer limit of the economic zone would not be very useful,

since only those coastal States which possessed sufficient and effective means could exercise their competences in a zone 200 miles beyond its coasts, which was unfortunately not the case of the developing countries.

18. The continental shelf such as it was conceived in existing law should not be retained either, since the economic goal it had been created to serve had been subsumed in the broader concept of the economic zone. It was not easy to justify the coexistence of those two régimes. The régime of the continental shelf defined according to the double criteria of depth and exploitability had given rise to many difficulties with regard to its delimitation between adjacent or opposite States, which could not be easily solved. Under such conditions there was no reason to retain the régime of the continental shelf, which should be absorbed by the exclusive economic zone. To facilitate the resolution of any conflicts which might arise from the application of the future conventions on the law of the sea, especially the convention on the economic zone, a specialized international legal body should be created, made up of specialists competent to deal with all maritime questions and, in particular, fishing disputes. Such a body would do a great deal for the maintenance of international law and order on the seas.

19. Mr. ILLUECA (Panama) said that his delegation had observed with interest the emergence of a majority opinion on the general principles of the exclusive economic zone and the patrimonial sea. The latter had been advanced by various Latin American delegations which had been forerunners in the search for a solution that had since been accepted by many other delegations, particularly the States members of the Organization of African Unity, as the most suitable under existing conditions of international law.

20. Together with Ecuador, Peru and Chile, Panama had been an early supporter of a maximum breadth of 200 nautical miles for the territorial sea calculated from the baselines to determine the area under the jurisdiction of the coastal State. When the Panamanian Government had adopted legislation in 1967 establishing a 200-mile territorial sea, it had been motivated by the same concerns as those delegations which supported the genuine exclusive rights of the coastal State over the entire exclusive economic zone.

21. It was reasonable to allow the free transit of vessels, overflight, and the laying of submarine cables and pipelines in the economic zone under the exclusive jurisdiction of the coastal State.

22. His delegation continued to give proof of its flexibility and attitude of conciliation. Like the rest of the Latin American countries, Panama would continue to be jealous of those rights which third States claimed over any part of its territory. Throughout its existence as a Republic, Panama, against its will, had had to endure an anachronistic colonial situation based on brute force. Consequently, Latin America was particularly vigilant with regard to any attempt to perpetuate colonialist or neo-colonialist exploitation of the resources of the people of that region, and particularly of the Isthmus of Panama. The doctrine of the permanent sovereignty of nations over their natural resources was the economic corollary of the right of the self-determination of peoples.

23. The exclusive economic zone was one of the key concepts of the Conference and was closely interrelated with the concepts of the territorial sea, contiguous zone and continental shelf. Consequently, it had to be dealt with in such an over-all context and the method of reaching agreement had to take that reality into account.

24. It was necessary to reach promptly an internationally accepted agreement incorporating the principles of sovereignty and exclusive jurisdiction of the coastal State over all resources and related matters in a zone of up to 200 nautical miles adjacent to its coasts. Such a régime was quite reasonable provided that it took into account regional and subregional realities, as

well as the legitimate interests of the land-locked States. The recognition of the rights of the coastal State over the exclusive economic zone should not affect its sovereign rights over the territorial sea or its continental shelf and "national sea-bed", whose characteristics had been defined in his delegation's statement on item 5 at the 20th meeting.

25. Mr. AKYAMAC (Turkey) said that his delegation supported in principle the idea of an exclusive economic zone beyond the territorial sea. Such a zone would probably offer to the developing countries the best opportunity for bolstering their economic development.

26. The coastal State should have sovereign rights within the economic zone of up to 200 miles from its shores for the purpose of exploring and exploiting the living and non-living resources of the sea, the sea-bed and subsoil thereof, and for regulating scientific research. Those rights should not affect the freedom of navigation and overflight, and the freedom of laying submarine cables and pipelines outside the territorial sea.

27. Residual rights should be carefully determined and regulated in such a manner as to preclude the misuse of rights recognized in connexion with the economic zone.

28. Although Turkey was a developing State surrounded on three sides by seas, it stood to receive no direct benefit from the establishment of economic zones since the narrow and semi-enclosed nature of those seas would prevent it from extending its jurisdiction to more than a fraction of the intended maximum breadth of the economic zone. Furthermore, as the Fishery Country Profiles prepared by the Food and Agriculture Organization of the United Nations had demonstrated, those seas were not well endowed in living resources.

29. Turkey, like most of the coastal States bordering on the Black Sea and the Mediterranean, fell into the category of geographically disadvantaged States, as did roughly half of the States participating in the Conference. With the addition of the land-locked countries, approximately 100 of the participants did not stand to derive any direct benefit from the exclusive economic zone.

30. It would appear that to date efforts to reach an agreement had been directed to reconciling the interests of the oceanic coastal States and the major maritime Powers. It was equally necessary, perhaps even more so, to strike a balance between the interests of the geographically disadvantaged States and those of the oceanic coastal States which also included the big maritime Powers. Only then would the new legal order respond to the realities and requirements of the times.

31. His delegation supported the statement made by the representative of Trinidad and Tobago at the 22nd meeting of the Committee in which he had said that the dictates of justice and equity required that the geographically disadvantaged States in a given region should enjoy preferential rights in the exploitation of the living resources within the economic zones of the other coastal States of that region. The Turkish delegation was particularly pleased with the clear emphasis which the representative of Trinidad and Tobago had placed on the role of the principles of justice and equity in the regulation of the legal norms for the sea, a notion which it had itself consistently supported and upheld.

32. As distinct from disadvantages for which redress could be found within a given region, there existed in different parts of the world disadvantaged regions such as the Mediterranean or Baltic, where all or the greater part of the States were disadvantaged and, because of the characteristics of those areas, no redress could be found for the situation within the region concerned. Such situations should not be overlooked. The 1973 London Conference for the Prevention of Pollution from Ships had designated five semi-enclosed seas as special areas with regard to pollution. That classification could also serve as a basis for the identification of disadvantaged regions and could

be complemented or corrected for the purposes of the new convention to include all the disadvantaged States of the world.

33. Individual States of disadvantaged regions should be granted the right to participate in the exploitation of the living resources within the economic zones to be established in the oceans to which such regions were in close proximity. Mere recognition of that right might none the less prove to be unrealistic in the short term, particularly in the case of developing States which would not for some time to come be able to engage in distant fishing. To compensate for such situations, special arrangements could be made for those States to have a higher share of the profits to accrue from the exploitation of the international area.

34. Certain proposals before the Conference had recommended that the traditional distant-water fishing States be granted fishing rights within the economic zones of ocean States. The creation of such a privileged club would be highly detrimental to the developing States which in the future might have to turn to distant-water fishing to sustain the growth of their economic and social development. Preferential fishing rights to be granted to States within the economic zones of other States should be accorded on the basis of the criteria referred to previously.

35. An accurate definition of the term "disadvantaged State" was of crucial importance. The Jamaican draft proposal (A/CONF.62/C.2/L.35) provided a number of criteria for that purpose, while another delegation was working out related but different criteria. Perhaps a method combining the two approaches would produce the desired definition.

36. Given the close connexion between the exclusive economic zone and the territorial sea, his delegation hoped that the Conference would be able to adopt a régime for the territorial sea which, while setting forth a uniform maximum breadth, would also provide for satisfactory regional arrangements in order to avoid creating problems for States in areas with special geographical characteristics.

37. In view of the large areas which the economic zone would include, the question of delimitation between adjacent and opposite States assumed great importance. The guiding principle of the Turkish proposal contained in document A/CONF.62/C.2/L.34 had been the achievement of a just and equitable delimitation between adjacent and/or opposite States based upon the agreement of the parties concerned.

38. While there was no reference to any specific method of delimitation in the Turkish draft proposal, no method, including that of the median line, had been excluded. States would have to use the most appropriate method, or combination of methods, in accordance with the particular circumstances and equity.

39. The median line was one of the methods of delimitation, but should not enjoy preference over other lines of delimitation such as the "equitable dividing line" which had been proposed in document A/CONF.62/C.2/L.28, or any other line to be agreed upon by States concerned. As the International Court of Justice had confirmed in its judgment in the North Sea cases³ the application of the median line was not obligatory. Furthermore the Court had clearly indicated in paragraph 89 of its judgment that the application of the equidistance or median line led unquestionably to inequity in the sense that the slightest irregularity in the coastline was automatically magnified by the median line.

40. International practice had shown that the median line could not be applied unilaterally. The decision whether or not to apply the equidistance line had to be reached by agreement among the States concerned.

41. Paragraph 1 of document A/CONF.62/C.2/L.34 dealt in a non-exhaustive manner with special circumstances. Islands,

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

islets and rocks within the area to be delimited deserved special attention since their presence could have such a distorting effect as to deprive a State of any meaningful economic zone. Neither the coastal State nor the State to which the islands belonged should be made to suffer from that situation. The principle of equity and all other relevant factors should therefore be taken into account in negotiations between the parties concerned. The foregoing references to islands had been made within the context of special circumstances, and not with regard to the régime of islands in general.

42. The provisions for the pursuit and conclusion of negotiations in the Turkish draft proposal guaranteed that the matter would not drag on to the detriment of either of the parties. An attempt had been made to enable the States concerned, irrespective of their size, to negotiate on an equal footing without inhibition and without being subjected to pressure or intimidation. His delegation believed that paragraph 2 of its draft represented an effective and desirable improvement over the negotiating machinery provided by the 1958 Geneva Conventions.

43. Mr. UNIS (Libyan Arab Republic) said that the economic zone was directly linked with the vital interests of nations and was an important factor in the prosperity and well-being of mankind.

44. There were two distinct and even conflicting approaches to the economic zone: first, peoples who were struggling to achieve a standard of living approaching that of the developed countries favoured the establishment of an exclusive economic zone in which the coastal State would exercise sovereignty over living and non-living resources. Secondly, there were those who sought to reduce to a minimum the sovereignty of the coastal State over its economic zone in order to maintain and increase differences in standards of living. The aim of the latter was to enable their fishing fleets to invade the coastal waters of the developing countries, monopolize fishery resources, transform them into finished products and sell them at high prices. That was contrary to the equitable principles that should prevail in the elaboration of a new law of the sea. His delegation therefore favoured the establishment of exclusive economic zones in which the coastal State would have complete sovereignty over living and non-living resources.

45. A number of draft articles had put forward the idea of the median line as the only solution to the problem of delimitation; others had pressed for a special treatment for islands. The finding in the North Sea judgment had clearly shown that the median line approach was not satisfactory in all cases. In order to provide greater flexibility with respect to methods of delimitation and to minimize differences of interpretation of the expression "special circumstances", delimitation methods should be agreed on by the various parties concerned, having due regard to prevailing conditions and special circumstances.

46. Mr. VALENCIA RODRIGUEZ (Ecuador) said that his country which had a territorial sea of 200 miles, had noted the interest shown by all countries in the rights and powers of coastal States in the sea adjacent to their coasts up to a distance of 200 miles. That interest was encouraging to the Latin American countries, including his own, which had extended their sovereignty over the 200-mile zone some 25 years earlier, on the basis of legitimate economic, legal and security considerations, without prejudice to any provisions of international law. What had seemed legal heresy at the time was now accepted even by the powerful countries which belittled the rights of the developing countries. No one now denied that the 200-mile limit was the only means of relieving the acute and growing subsistence problems of the developing world.

47. His delegation had also noted the somewhat discouraging fact that there was no uniformity of opinion on what was meant by the economic zone. For example, some texts referred to the coastal State's rights of sovereignty in and throughout the 200-mile zone for the purpose of exploring and exploiting

resources, while others referred merely to sovereign rights; but no wording had been found which explicitly described the new legal concept and it finally had to be admitted that sovereign rights simply meant sovereignty. Although it was argued that sovereign rights did not devolve from the exercise of sovereignty, a State could hardly exercise sovereign rights without possessing sovereignty. Presumably with the object of establishing other shades of meaning, it was also said that the coastal State should exercise sovereign rights in, but not over, the zone. It would be difficult for the State to possess sovereignty over certain constituent parts of the zone, such as renewable or non-renewable resources, but not over the zone itself.

48. Such notions could only be a source of controversy in the future, which controversy would arise when it was sought to determine whether a particular resource was under the sovereignty of the State in question. The disparity of concepts was compounded by talk about a State's preferential rights, or special powers or authority in the 200-mile zone—which suggested doubts regarding sovereign rights—while at the same time it was maintained that the State in question could exercise authority over the continental shelf. That would mean that the State's sovereignty, while extending over the sea-bed and subsoil, was in some doubt where the superjacent waters of the same zone were concerned. Yet the resources of the continental shelf and the resources in the superjacent waters were equally important to the coastal State.

49. Furthermore, if, as proposed in some texts, the economic zone should be exclusive in favour of the coastal State, how was it possible to talk both of exclusiveness, which suggested sovereignty, and of the coastal State having no sovereignty? If the coastal State exercised its rights to the exclusion of third States, that was nothing other than sovereignty.

50. Some delegations—no doubt with a view to overcoming those disparities—had drawn up lists of rights and powers for the coastal State over its exclusive economic zone, ranging from exploration and exploitation of the renewable living resources of the sea-bed and the non-renewable resources of the continental shelf to exclusive jurisdiction over fiscal matters and authorization and control of scientific research. Those were important economic rights which, again, must involve the coastal State's sovereignty.

51. He wondered whether such rights—however exhaustive the list—would really meet the future needs of the developing peoples, needs which were increasing by leaps and bounds as a result of the population explosion, the deterioration in international terms of trade and the discriminatory measures adopted by the powerful States in their own interests. In other words, were those the only economic rights that coastal States could exercise in the proposed 200-mile economic zone? They would never meet those countries' needs, because they would be only partial rights if the coastal State did not have sovereignty over the zone and the great Powers were allowed to assert their claims with respect to it.

52. The inevitable conclusion was that the only legally acceptable and economically viable solution for the developing peoples lay in the doctrine of sovereignty over a 200-mile zone, in other words, a 200-mile territorial sea. That doctrine also had the important advantage that residual rights and powers in the zone would be duly recognized as belonging to the coastal State. With a territorial sea of 200 miles, the coastal State would exercise rights and privileges deriving from sovereignty and at the same time, in a spirit of co-operation, freedom of sea and air communication and freedom to lay cables and pipelines would be maintained in the zone for the international community, subject only to the restrictions resulting from the coastal State's exercise of its rights.

53. His delegation appreciated the objectives pursued through the establishment of the exclusive economic zone, the more so as it was based on the territorial concept, although it

distorted that concept by seeking to break down sovereignty into compartments called specialized competences.

Mr. Aguilar (Venezuela) took the Chair.

54. Mr. REMY (Haiti) said that his country was interested in the sea as a source of wealth, since it had few natural resources. It was anxious for the developing countries to be enabled to exploit the biological and mineral resources of the seas adjacent to their coasts. Some species were in danger of extinction owing to unrestricted exploitation by fishing fleets from distant lands. The 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas⁴ recognized the coastal State's vital interest in the resources adjacent to its coast but did not meet the legitimate aspirations of the developing countries regarding fishing and the conservation of the sea's biological resources. His country had taken part in consultations with other Caribbean countries concerning joint policy on various aspects of the law of the sea to meet contemporary political, economic and social conditions, giving special attention to the question of a fairer share for the developing countries. Those consultations had resulted in the Declaration of Santo Domingo of 1972,⁵ introducing—among other things—the new concept of the patrimonial sea or exclusive economic zone, which gave the coastal State sovereign rights over the renewable and non-renewable natural resources in the sea and on the sea-bed and its subsoil up to a 200-mile limit measured from the applicable baseline. Under that concept, the coastal States also had the duty to promote and the right to regulate scientific research in that zone and to adopt measures to prevent pollution of the marine environment.

55. The notion of the patrimonial sea was new to international maritime law and represented a means of replacing a system of inequality, injustice and under-development by a more viable, just and humane order. There was no justification for doubt concerning the new concept on the ground that it might impede navigation and other uses of the sea. In that connexion he recalled the statement made by the President of Venezuela at the 14th plenary meeting of the Conference that Venezuela defended the sea as an instrument of peace and justice, of collective wealth for all nations and as a compensating factor in establishing a world equilibrium.

56. The idea of justice which must be embodied in the new law of the sea would be illusory if it benefited only the coastal States. The land-locked and geographically disadvantaged countries must also share in the exploration and exploitation of the biological and mineral resources in the economic zone and their rights should be explicitly recognized in the convention. Details could be negotiated by the parties concerned.

57. One of the problems connected with the exclusive economic zone or patrimonial sea was recognition of the rights of third States exploiting the pelagic resources of the zone where the coastal State lacked the technical capacity to take the maximum allowable catch and there was a surplus of exploitable resources. While his delegation understood the concern of such States about possible wastage due to under-exploitation, it could not countenance misuse of resources, particularly at a time when land-based natural resources were insufficient to meet the growing needs of an expanding world. However, it considered that in the patrimonial sea the coastal State should have the right to determine the conditions of any agreement on exploiting the zone, particularly on methods of exploitation. That would open the way to bilateral and regional agreements and would at the same time encourage technical co-operation.

58. His delegation was somewhat concerned at proposals for eliminating the contiguous zone and the continental shelf. The contiguous zone could well be preserved as part of the eco-

nomic zone or patrimonial sea adjacent to the territorial sea of 12 nautical miles—which was a reasonable limit—since the considerations justifying the contiguous zone, i.e., the need to prevent and punish infringement of the coastal State's territorial sea, were still valid. Moreover, in a number of countries regulations to that effect were still in force. Haiti, for example, had issued a decree in 1972 establishing a contiguous zone of 3 nautical miles beyond the limits of its territorial sea. As to the continental shelf, he thought that the 200-mile limit would eliminate it, since its régime would be covered by the régime of the patrimonial sea. He therefore favoured adoption of the African proposal to reduce its extent, in order to avoid a plurality of régimes and taking into account the fact that the concept of the common heritage of mankind had already begun to be downgraded.

59. Mr. KIM (Democratic People's Republic of Korea) said that his delegation fully supported the concept of the establishment of the economic zone or patrimonial sea to a limit of 200 nautical miles, which appeared to be supported by most delegations. Some imperialist Powers, however, were opposing it. One, for example, was opposed to the establishment of exclusive rights over fishery resources in a zone extending beyond the limits of the territorial sea, while another proposed that foreign fishermen should have non-discriminatory rights to fish in a coastal State's economic zone when the latter was not using its resources in the zone to the full. Those Powers were attempting to harvest the living resources in the economic zones of other States beyond the limits of the territorial sea and were a threat to developing coastal States. He was particularly concerned about imperialist pillage of fishery resources in Korea's southern sea and in the fishing grounds of other developing countries.

60. The following were important and essential elements in the concept of the economic zone or patrimonial sea and should be included in the new convention. First, the coastal State should have within its economic zone or patrimonial sea sovereign rights over living and non-living resources, including preservation and protection of those resources, up to a limit of 200 nautical miles, and jurisdiction over scientific research and control of marine pollution. Secondly, the land-locked countries should have reasonable rights and interests and should be given the possibility of participating in exploitation of the living resources in the economic zone or patrimonial sea of neighbouring coastal States, such rights and interests to be provided for under bilateral or regional agreements. Thirdly, the coastal State should allow freedom of navigation and overflight and laying of cables and pipelines, without prejudice to its sovereign rights and exclusive jurisdiction over the zone, and subject to its consent to delineation of the course for the laying of such cables and pipelines. Fourthly, the boundary of the economic zone or patrimonial sea between adjacent or opposite States should be determined by consultation in accordance with the principle of an equidistant line or a median line.

61. Mr. MANGAL (Afghanistan) said that his delegation, as a matter of principle, did not support unilateral action by States aimed at broad seaward extension of their national jurisdiction. Such action was not consistent with the concept of the common heritage of mankind and might result in conflicts in the seas and delay the codification of the international law of the sea.

62. The concept of the economic zone or patrimonial sea would be just and acceptable only if the rights and interests of other States, particularly the land-locked and other geographically disadvantaged States, were taken into account. His delegation, which represented a land-locked country, would not be satisfied with a legal régime for the economic zone under which the coastal State would exercise sovereign rights or jurisdiction over all the resources of the area. In the first place, the concept of the economic zone did not provide for a balanced accommo-

⁴United Nations, *Treaty Series*, vol. 559, p. 286.

⁵Official Records of the General Assembly, *Twenty-seventh Session, Supplement No. 21* and corrigendum, annex I, sect. 2.

dation of the interests of States. The extension of a coastal State's sovereignty to the area adjacent to its territorial sea for the purpose of exclusive exploitation by that State would be neither just nor conducive to international co-operation. The rights and interests of land-locked and other geographically disadvantaged States with respect to the natural resources of the economic zone must be taken into account.

63. A consensus seemed to be emerging in favour of the 12-mile limit for the territorial sea where coastal States would exercise full sovereignty. His delegation would support such a limit measured from the applicable baseline. There must be two distinct legal régimes for the territorial sea and the economic zone.

64. The economic zone, if agreed on by the Conference, would consist of an area which had previously been part of the high seas. By any reasonable standard, land-locked and other geographically disadvantaged States should therefore have equal rights with coastal States to explore and exploit the living and non-living resources of that area on a non-discriminatory basis, and the right to free access to and from the sea and the economic zone. That legitimate claim should not be construed as prejudicial to the coastal State's interests: such rights would be exercised in a peaceful and orderly manner, in accordance with the provisions of the new convention and having regard to the legitimate interests of the coastal States concerned and of the international community. Land-locked States would be required not to transfer their rights in the economic zone to third States, but they would be entitled to obtain technical and financial assistance from other States and from international organizations to develop their own industries.

65. He did not share the view, nor the arguments underlying it, that the existing continental shelf régime should be retained within the framework of the new economic zone concept. Acceptance of the economic zone should supersede the 1958 continental shelf régime. A plurality of régimes in the economic zone would not provide a just accommodation of the interests of other States, including the land-locked States. The 1958 Convention on the Continental Shelf⁶ totally disregarded the rights and interests of land-locked States in the resources of the continental shelf. For that reason his country had not acceded to the Convention. It could not accept the notion of the continental shelf as a natural prolongation of a country's territory to the outer limit of the continental margin and the extension of full sovereignty to the area.

66. The economic viability of the international area should be preserved and maintained in terms of both size and resources, so as to give effect to the concept of the common heritage of mankind. That viability could be adversely affected by broad seaward extensions of the jurisdiction of coastal States.

67. Mr. DE ABAROA Y GOÑI (Spain) said his delegation attached great importance to the question of participation by third States in the rational exploitation of the resources of the economic zone. While the non-renewable resources of the zone should be reserved exclusively to the coastal State, the nature of living resources justified the participation of third States in their exploitation. There were a number of criteria he wished to put forward as a basis for regulating such participation.

68. His country had to rely on marine protein to cover its shortfall in meat protein caused by geographical and climatic factors. It also had a very narrow continental shelf, particularly in the north, and that shelf was generally poor in fishery resources. In addition, most of its coastline was on the Mediterranean Sea, a marine area that was ecologically endangered. Consequently, his country had been obliged to build up a large fishing fleet. It had an obvious interest in seeing that the future convention would contain provisions governing the participation of third States in the exploitation of the living resources of

the zone for the mutual economic advantage of coastal and third States.

69. It must also be established that, when certain conditions set out in the future convention were met, the coastal State would authorize third States to participate in the rational exploitation of the living resources of the zone. Such participation could be based on international co-operation and mutual advantage, without discrimination between possible participants but without prejudice to preferential treatment that might be granted to specific States. The latter was an important issue that required accurate definition; special account should be taken of States whose vessels had habitually fished in the waters of the zone.

70. The coastal State should authorize third States to fish when it was unable to take all of the allowable catch. In determining the allowable catch, the coastal State must take into account biological and statistical data: neighbouring States should exchange information on fish populations common to their economic zones in order to avoid a biological imbalance in any of the zones. The allowable catch should be the maximum that would permit the attainment, maintenance or recovery of the maximum sustainable yield.

71. Within the zone, the coastal State should promulgate and enforce rules and regulations for the conservation and rational exploitation of the resources of the zone. Such measures could include the specification of permitted fishing gear and methods, the establishment of closed seasons and areas, the establishment of minimum allowable sizes for fish taken, the regulation of fishing activity, the establishment of catch quotas, and the establishment of over-all catch levels for fishermen from third States.

72. His delegation considered that the Food and Agriculture Organization of the United Nations and the regional and international fishery organizations could be of great assistance to coastal States in establishing allowable catches and ways to regulate the conservation and rational exploitation of the living resources of the zone.

73. The coastal State should also regulate the granting of fishing licences in its zone to fishermen from other areas.

74. The régime of the zone gave rise to such other problems as the question of its delimitation. That was a matter which would have to be considered at a later stage of the Committee's work.

75. Mr. SANTISO GALVEZ (Guatemala) said he preferred the term "patrimonial sea" to the term "exclusive economic zone", although he was of course aware that the name used did not determine the essence of the thing it described. The concept of the patrimonial sea had become the subject of greater attention from his delegation from the time of the Venezuelan proposal that it should become part of a package deal intended to reconcile the interests of all concerned. The concept was of vital importance for peace and justice and for higher living standards throughout the world.

76. His delegation was in favour of the establishment of a territorial sea extending 12 miles from the low-water line; the coastal State would have full sovereignty over the sea-bed, subsoil and superjacent waters and resources thereof without prejudice to the principle of innocent passage. It also supported unreservedly the establishment of a zone adjacent to the territorial sea extending up to 200 miles from the baseline established for the territorial sea. In that area the coastal State would have full sovereignty over the renewable and non-renewable resources of the sea-bed, subsoil and superjacent waters. The coastal State would be responsible for anti-pollution measures and the regulation of scientific research, without prejudice to freedom of navigation, overflight, and the laying of cables and pipelines. As a signatory to the 1958 Convention on the Continental Shelf, Guatemala considered that the continental shelf should be taken to mean the sea-bed and

⁶United Nations, *Treaty Series*, vol. 499, p. 312.

the subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, now outside the area of the patrimonial sea, to a depth of 200 metres or the limit of exploitability. Nevertheless, its position was flexible and it was ready to consider and support other proposals.

77. He shared the views expressed by the representative of El Salvador at the 24th meeting regarding the contents of document A/CONF.62/L.4.

The meeting rose at 11.05 p.m.

28th meeting

Tuesday, 6 August 1974, at 10.45 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

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

Exclusive economic zone beyond the territorial sea (continued)

[Agenda item 6]

1. Mr. OGISO (Japan) said that it was his delegation's understanding that items 6 and 7 represented alternative rather than complementary approaches. Those items were of central importance to the Conference and to the world community as a whole, since they involved the question of how best to conserve and distribute the wealth of the oceans among the nations of the world.

2. His delegation interpreted proposals for an exclusive economic zone as involving a zone in the high seas in which the coastal State had exclusive rights over all resources, living and non-living. The crucial issue for his delegation was the proposed rights of coastal States over living resources in the adjacent waters.

3. For Japan, the sea areas beyond the territorial sea should retain basically the character of high seas. It had been argued that freedom of fishing in the high seas could be abused, but it was surely not appropriate to abolish a freedom because of the risk of abuse.

4. Although it was true that in certain limited cases freedom of access to fishery resources might have led to over-exploitation and depletion, it was an exaggeration to contend that the danger of depletion of world fishery resources was imminent or omnipresent. The truth of the matter, as the representative of the Food and Agriculture Organization of the United Nations had pointed out at the 46th plenary meeting, was that despite the popular belief to the contrary, the number of stocks that were actually depleted, in the sense that their productivity had been significantly reduced, was still small. The world catch could thus still be increased substantially before the level of full utilization was reached.

5. If conservation was required with regard to certain species, his country was fully prepared to co-operate in bringing it about. In that regard, the new convention should contain a general obligation for all States to adopt conservation measures, and should lay down certain basic principles relating to such measures, including the need to base them on the best scientific evidence available, the requirement of consultation with appropriate international or regional organizations and the principle of non-discrimination among fishermen. Moreover, the special status of the coastal State with regard to conservation should be recognized. Thus, the coastal State should have the right to participate, on an equal basis, in any survey of fishing resources, whether or not nationals of that State were actually engaged in fishing, and other States conducting a survey should make available to the coastal State all their findings on the coastal State's adjacent waters.

6. In order effectively to ensure sound conservation of fishery resources, efforts at the national level had to be closely linked with international co-operation. International and regional organizations had played an important role in that regard, and should continue to be able to do so. His delegation therefore would favour any proposal that would strengthen co-operation with such organizations.

7. With regard to the more critical problem of distribution or allocation of fishery resources, all delegations would have to be guided by considerations of equity and justice. His delegation's detailed proposal for a fisheries régime on the high seas, submitted in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction,¹ was an attempt to provide for a broad and equitable accommodation of the interests of all States, taking into account the dependence on fishing of the coastal State and of other States. His delegation maintained the position adopted in that proposal.

8. Freedom of access to fishery resources, if it was retained only beyond 200 miles, would become practically meaningless. Except for highly migratory ocean species, fish lived close to the shore, mostly within areas that would be covered by a 200-mile zone, and they were also unevenly distributed, tending to live in great abundance off the coasts of a rather limited number of countries. If the proposed 200-mile economic zone was adopted, the major fertile fishing grounds of the world would come under the exclusive jurisdiction of several coastal States, including some highly developed countries. That fact showed, as other representatives had observed, that acceptance of the exclusive economic zone as currently conceived would accentuate rather than reduce existing inequities.

9. His delegation was very much aware of the aspirations of developing countries for economic advancement through development of their fishing industry, and of the special concerns of countries whose economy was overwhelmingly dependent on fisheries. If proposals for the economic zone, or other similar proposals, were intended to satisfy the concerns of those countries, his delegation would understand their merits and could go a long way toward accommodating the interests of those countries. Special treatment, based on equity and justice, also had to be given to land-locked and otherwise geographically disadvantaged States in order to offset their disadvantaged position.

10. Last, but not least, respect had to be given to the rights of States which had traditionally engaged in fishing, and in whose economy fishing and related industries naturally played an important part. Fishing had long been a necessity for the survival of the Japanese people because of the limited agricultural and livestock-raising potential of Japanese territory, and the Japanese population had also depended on fish and fish pro-

¹ Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 and corrigendum, annex III, sect. 10.

ducts for the major part of their protein supply. Fishing would therefore continue to be vital to his country regardless of the over-all development of its national economy. The solution reached at the Conference, if it was to be viable and generally acceptable, must provide for protection and due respect for traditional fishing rights. It should also take into account the conclusions reached by the International Court of Justice in the two Fisheries Jurisdiction cases,² which had held that both a coastal State and a non-coastal State had rights in the fishing resources of the north-east Atlantic because of the special dependence of their peoples on fishing. His delegation's major difficulty with the various proposals for an exclusive economic zone was the failure to take into account the need for adequate protection of the rights of other States, including traditional fishing States.

11. Document A/CONF.62/C.2/L.21 submitted by Nigeria was an improvement on other proposals in that it at least attempted to set out more clearly the rights and obligations of both the coastal State and other States in the economic zone. Article 2, paragraph 2, of that document, although it could be improved from the point of view of equity and accommodations of the interests of all States, at least was a starting point for the right approach.

12. As one of the several countries in the world which had rivers that spawned salmon, Japan fully shared the view of some countries which had emphasized the special concerns of the State of origin of anadromous species. But it would be asking too much for those States to claim proprietary rights over all anadromous species throughout their migration, when those species spent more than three quarters of their life cycle in the middle of the ocean, thousands of miles away from where they had spawned. That problem should be resolved through consultations among the limited number of countries which it directly affected. His delegation reserved the right to submit a proposal on that problem.

Mr. Aguilar (Venezuela) took the Chair.

13. Mr. RIPHAGEN (Netherlands), introducing document A/CONF.62/C.2/L.14, summarized the philosophy behind that proposal in two essential ideas: first, that notwithstanding the great variety of geographical situations involved, there were some objective parameters for determining marine boundaries between opposite and adjacent States; and secondly, that there was a need for compulsory procedures to be followed in all cases where the claims of States in respect of marine boundaries clashed.

14. The objective parameters undoubtedly included the median line or equidistance principle, which could be applied automatically and often, although not always, resulted in obviously equitable solutions.

15. There were, however, more complicated situations in which other objective parameters would have to be used to correct the application of the equidistance principle if an equitable solution was to be found. However, in view of the great diversity of situations, it was hardly possible to enumerate such parameters and their interrelationship within a convention article. Accordingly, paragraph 1 of his delegation's proposal was generally phrased, referring to the application of "equitable principles, taking into account all relevant circumstances".

16. With respect to the need for compulsory procedures, there was a duty on the part of States whose claims clashed to negotiate in good faith in order to arrive at an agreement determining the precise boundaries between their respective zones, and to refrain from unilateral action in that respect. The fulfilment of that double duty on both sides might require some outside help pending final settlement. It was for that reason

that paragraphs 2 and 3 of the proposal should be taken together. Whereas paragraph 2 restrained unilateral action on either side by an automatically applicable rule, from which of course the States might immediately deviate by common agreement, paragraph 3 opened the possibility for each party to invoke the help of an impartial conciliatory body which might at any time draw the attention of the parties to any measures which might facilitate amicable settlement.

17. Obviously the proposed conciliation commission could, if circumstances so warranted, draw the attention of the parties to any interim solution which might facilitate the conclusion of a final agreement on delimitation. It was to be expected that the procedure of conciliation would normally lead to a final agreement. However, in the case of an irreducible difference of opinion between the States concerned on the relevance of certain factual circumstances or on the relative weight of the various parameters, there would be no other peaceful way but judicial settlement. Paragraph 4 of the proposal accordingly referred to the general article on the compulsory settlement of disputes without which, in his delegation's view, no new law of the sea convention could be generally acceptable.

18. The draft article also contained the term "economic zone". In order to avoid any misunderstanding, he wished to make it clear that, in his delegation's view, the economic zone was one in which the coastal State might exercise certain functionally determined rights, subject to the fulfilment of certain duties towards the international community as a whole and towards other States. If the concept of an economic zone were understood in that sense, it would be acceptable to his delegation. In view of the diversity of the different parts of the Kingdom of the Netherlands, only a convention acceptable to all groups of States, providing for the necessary compromises, would be acceptable to the Kingdom as a whole.

19. Mr. ROBINSON (Jamaica) said that the concept of an exclusive economic zone or patrimonial sea, the single most dynamic and important development in the law of the sea since the early 1940's had been advanced by some developing countries with the laudable aim of offsetting the economic imbalance created by history in favour of a few powerful countries.

20. As a developing country, Jamaica welcomed the concept of the exclusive economic zone and the patrimonial sea in principle. However, although those concepts could be a force for the economic good of some countries, they could also be a force for the economic doom of others, for not all countries had a sufficiently wide expanse of waters fronting their coasts and a sufficient wealth of resources in those waters to warrant the claim of a 200-mile jurisdiction. Indeed, it was nature's defiance of a country's ideological views which made the problems of the law of the sea so intractable. The challenge to the Conference, then, was to devise a strategy to create a legal order which did not necessarily reflect the accidents of geography. There was an ironic possibility that a concept fathered by developing countries for the benefit of developing countries could be made to operate to the detriment of other developing countries because of the accidents of nature. Hence, in his delegation's view, the concept of the economic zone must, while retaining its essential characteristics, be made more flexible and adaptable to the needs of developing geographically disadvantaged countries. His delegation's acceptance of an economic zone or patrimonial sea was conditional on the granting to developing geographically disadvantaged States of a right of access to exploit the living resources of the neighbouring zones. That requirement was justified not only because of the imperative of social justice, but also on the basis of what his delegation conceived to be current law. In that connexion, he agreed with the statement of the representative of Trinidad and Tobago at the 22nd meeting that even when the Conference endorsed the concept of an exclusive economic zone, it would not be codifying but progressively developing international law. He also supported the views of the delegation of Barbados

² *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland)*, Merits, Judgment, I.C.J. Reports 1974, p. 175; *Fisheries Jurisdiction (United Kingdom v. Iceland)*, Merits, Judgment, I.C.J. Reports 1974, p. 3.

at the same meeting with regard to the right of access for geographically disadvantaged States.

21. His delegation was heartened by the emergence of a general trend towards the granting of rights of access to land-locked and other geographically disadvantaged States, expressed not only by "beneficiary" States but also by "grantor" States. Examples of the attitude of the "grantor" States were to be found in paragraph 9 of the Declaration of the Organization of African Unity on the issues of the law of the sea (A/CONF.62/33); in article VIII of the proposal submitted by various African countries to the sea-bed Committee (A/9021 and Corr.1 and 3, vol. III, sect. 29); and in articles 5 and 6 of the draft articles proposed by Canada, India, Kenya and Sri Lanka (*ibid.*, sect. 27).

22. Several Latin American countries had supported the granting of access to their adjacent waters by geographically disadvantaged States, but a distinction should be drawn between the patrimonialists and the strict territorialists claiming a territorial sea up to 200 miles. His own delegation had submitted draft articles on the rights of developing geographically disadvantaged States in a territorial sea beyond 12 miles in document A/CONF.62/C.2/L.36.

23. Although he recognized the difference between the two approaches, he would also deal with proposals from those who advocated territorialism since his delegation's primary concern was with rights of geographically disadvantaged States within maritime zones beyond 12 miles, whether economic zones, patrimonial sea or territorial sea of 200 miles.

24. Section VII of the Uruguayan draft (*ibid.*, sect. 13), spoke of preferential treatment for States having no sea-coast with regard to fishing rights in the territorial sea. The rights of geographically disadvantaged States had received the fullest treatment in article 13 of the proposal submitted by Ecuador, Panama and Peru (*ibid.*, sect. 16), which provided for preferential régimes for such States with regard to exploitation of renewable resources in the waters of a region. The Argentinian draft articles (*ibid.*, sect. 26) provided in paragraph 8 for a preferential régime for geographically disadvantaged States in a region or subregion with regard to fishing in the exclusive maritime areas of other States of the same region. Document A/CONF.62/L.4, submitted to the Conference by nine countries from different geographical regions, had expressly recognized the need for rights of access for developing land-locked and other geographically disadvantaged States to the living resources of the exclusive economic zone of the neighbouring coastal States.

25. His delegation had been further encouraged by the statement of the President of Mexico at the 45th plenary meeting that his country was prepared to work out arrangements with Caribbean countries for which an economic zone would not be of significant value with regard to fishing in the area. In that connexion, it was disappointed with the Nigerian draft articles in document A/CONF.62/C.2/L.21, which did not deal with rights of access for developing geographically disadvantaged States, but was gratified that a revision had been promised to deal with that matter.

26. Proposals from beneficiary States were contained in the draft articles submitted by Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore (*ibid.*, sect. 28); by Uganda and Zambia (*ibid.*, sect. 30); by Zaïre (*ibid.*, sect. 48); and by his own country (*ibid.*, sect. 45).

27. A broad trend in favour of the rights of geographically disadvantaged States in the economic zone had thus emerged, which he hoped would be reflected in the informal working paper to be prepared by the officers of the Committee. The problem remaining was how to reflect that trend in the convention itself. His delegation believed that although regional arrangements would have a useful role to play, the right itself must be secured in the general multilateral convention, and

that between the right of a State to establish an economic zone and the rights of geographically disadvantaged States within that zone must be a parallelism. Moreover, those rights must be so enshrined in the convention as to form an essential characteristic of the economic zone.

28. The articles put forward by his delegation in document A/CONF.62/C.2/L.35 reflected those views: they were entitled "Rights of developing geographically disadvantaged States within the economic zone or patrimonial sea". Article 5 defined geographically disadvantaged States to mean developing States which were land-locked or for geographical, biological or ecological reasons derived no substantial economic advantage from establishing an economic zone or patrimonial sea; or States which were adversely affected in their economies by the establishment of economic zones or patrimonial seas by other States; or States which had short coastlines and could not extend uniformly their national jurisdiction. That definition differed from the one submitted by his delegation the previous year in that land-locked countries were given official treatment. His delegation would, however, welcome suggestions for improving its text. Ultimately what was a geographically disadvantaged State would be a matter of choice rather than proof; nevertheless, he believed that his delegation's definition identified the essential features of such a State.

29. Mr. DIALLO (Guinea) said that the constitution of his country contained a provision renouncing part or all of its sovereignty in favour of African unity. The need for security must be reconciled with that of development, and the international community had an obligation to find solutions taking into account the hopes placed in it by the peoples of the world.

30. Unfortunately not all countries applied the principles adopted by Guinea. The seas and oceans whose traditional role was to promote trade among nations had become sources of tension. His country had hoped that the international community would try to bring about a new economic era. However, selfish national interests had prevailed, and certain great Powers were trying to take steps to safeguard their future. The concept of the economic zone was in fact an opium for the developing world, proffered in an attempt to make it forget the real needs of its development. The exclusive economic zone had today been voided of its content. His delegation would therefore always defend the idea of a territorial sea of 200 nautical miles with all the rights attached thereto.

31. Mr. YANKOV (Bulgaria) said that the shape of the economic zone would have a decisive impact on the law of the sea, for the establishment of economic zones comprising the main part of the oceans with accessible natural resources would affect the peaceful uses of the sea. The premises of the economic zone concept must be thoroughly examined, especially since there were many interpretations of the rights and duties of the coastal State in the zone.

32. Taking into consideration the interests of the many developing countries which supported the economic zone, his Government had already expressed its readiness to co-operate in the preparation of generally acceptable principles and rules of international law relating to the zone, as a part of a package including a 12-mile territorial sea, free transit through straits used for international navigation, and the régime of the sea-bed beyond the limits of national jurisdiction.

33. In some interpretations the economic zone had acquired a very broad, if not unlimited, scope. The idea had been introduced in 1971 in the form of an economic zone in which States could issue fishing licences in return for technical and other forms of assistance. It had then developed into a 200-mile zone of exclusive jurisdiction over all living and mineral resources of the sea and the sea-bed. The view had been expressed at the Committee's 3rd meeting that the logical conclusion of the concept of an exclusive economic zone was the identification of the economic zone with the territorial sea; it had also been

argued that economic development required a national maritime zone that was as vast as possible and that the Conference should give up the idea of differentiating between the territorial sea and the economic zone. The view had also been expressed that the economic zone had found simple, logical and coherent expression in the adoption of a territorial sea of 200 miles. Draft articles had already been submitted which more or less explicitly broadened the scope of exclusive rights over the living and mineral resources to the extent of full sovereignty, thus eliminating any practical difference between the economic zone and the territorial sea.

34. The problem of the supply of energy and raw materials was the great challenge of modern times, and thus the distribution of energy and raw material resources would be a decisive factor in world stability. The main beneficiaries of the establishment of large national seas would be not more than 30 countries with long coastlines: about one third of them were developed States, some of which had huge natural resources on land; a significant number of the developing States in the same category had considerable mineral resources on land. Clearly, excessive national appropriations of large areas of the sea might lead to serious friction if a narrow nationalistic approach prevailed in the shaping of the world order over the oceans. It would be unfortunate if their geographical situation and the state of their economy were to give some States a privileged position in the uses of the sea and the exploitation of its natural resources. The order for the world oceans should therefore be based on the principles of equity and on a balance between the rights of the coastal States and the interests of the international community. His delegation appreciated the aspirations of many developing countries to economic independence and well-being, but it was necessary to prevent excessive national claims detrimental to the management of the marine environment and the other peaceful uses of the sea. The economic zone should serve the economic needs of coastal States and should not be made a device for the extension of their territorial sovereignty. That constructive approach was reflected in the draft articles submitted by the socialist countries (A/CONF.62/C.2/L.38).

35. Reviewing the main provisions of those draft articles, he noted that the sponsors had attempted to meet the legitimate demands of the developing countries. The draft articles had not been submitted for bargaining purposes but to provide a basis for meaningful negotiations. The sponsors hoped that the articles would be appreciated as an effort to provide for a comprehensive agreement on the over-all package on the law of the sea.

36. Mr. FERGO (Denmark) said that in introducing his country's draft article on anadromous species (A/CONF.62/C.2/L.37) he would like to comment in greater detail on the subject.

37. His delegation had already stated that fishing for anadromous species should not be regulated by a global convention and that it did not agree that such fishing, especially in the case of salmon, should be reserved for and regulated only by the countries in which the species had hatched and spent their early life.

38. The anadromous fish were certainly a unique aquatic resource; during early life they were fully dependent on a fresh water environment, while later they required the salt water of the open sea. The migration of salmon made it unacceptable that only one country, the spawning State, should claim ownership of salmon stocks. During migration the salmon left the waters of the spawning State and spent much of its life in the high seas and near the coasts of other countries, during which time it gained more than 95 per cent of its weight, depending fully on the sea resources of those areas. The salmon lived on other living resources of the sea, competing to some degree with local fishermen. Thus the management and conservation of the salmon was not a problem only of the spawning State.

39. Salmon fishing was often of overwhelming importance to fishermen in certain regions; it was vital both to the population of Greenland and to Danish fishermen. It was the fishermen's means of livelihood and provided the material for many shore enterprises. Clearly, therefore, his country was concerned to have a rational and equitable regulation of salmon stocks.

40. The salmon was able to gain most of its weight during migration in the sea only because other States, to the same degree as the spawning State, avoided pollution of their waters. Such States had an equal interest and responsibility as the spawning States in preventing contamination of the sea.

41. During the time it spent in the coastal waters of Greenland the salmon gained one quarter of its final total weight during a period of only three or four months. Thus, it would seem unreasonable to local fishermen if they were not allowed to catch at least part of the fish which they naturally regarded as their own. Moreover, scientists estimated the natural mortality of the salmon while moving, for example, between West Greenland and home waters to be in the 15-40 per cent range; thus, many of the salmon caught by other States would in any case never have returned to their spawning river.

42. The spawning States argued that it was unjust that only they should pay for the conservation measures needed to maintain the salmon stocks of their rivers. In his delegation's view, if a country of origin contaminated or changed the natural environment it should bear the expense of remedying the ill effects, and such expense should form no basis for compensatory claims involving ownership of the stock "thereby produced". If, however, expenditure and efforts went beyond the remedying of previous damage, they might be taken into consideration.

43. Conservation measures including restrictions on catch might sometimes be biologically necessary and in the interests of all States concerned, but specific rules ought not to form part of a global convention. An article could be included in the convention to ensure that rules were worked out bilaterally and/or in regional organizations.

44. Mr. REYES (Venezuela) said that acceptance of the exclusive economic zone, which was called the patrimonial sea in the Declaration of Santo Domingo³ and in the joint proposal of Colombia, Mexico and Venezuela (A/9021 and Corr.1 and 3, vol. III, sect. 9), was the corner-stone of the political agreement sought by the Conference. He noted that his country had been the first to put forward the idea of the patrimonial sea in the sea-bed Committee.

45. Clearly, a majority of States were agreed on the establishment of an economic zone, although there were differences as to the nature and extent of the rights to be enjoyed therein by coastal States. The economic zone was quite distinct from the territorial sea: in the territorial sea a State had sovereignty and all other jurisdictions, subject only to the right of innocent passage; in the patrimonial sea, it would have only certain jurisdictions specified in the new convention.

46. The legal régime of the patrimonial sea had two basic aspects: first, the granting to the coastal State of sovereign rights over the renewable and non-renewable resources found in the waters, the sea-bed and the subsoil of the zone, together with other jurisdictions, notably with regard to the preservation of the marine environment and to scientific research; secondly, the protection of the freedoms of navigation, overflight and the laying of cables and pipelines. Thus the aspirations of many countries to use the resources of their adjacent waters to feed their peoples and speed their progress were harmonized with the general concern not to impede communications unnecessarily. It was necessary to define the rights and duties of coastal States and those of other States exercising the freedoms

³ *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 and corrigendum, annex 1, sect. 2.*

he had mentioned. Thus, his delegation conceived the economic zone as a transitional zone between the territorial sea and the high seas or international zone.

47. His delegation thought the structure of the Nigerian draft articles (A/CONF.62/C.2/L.21) appropriate, but two points gave rise to difficulties. First, article 1, subparagraph 2 (d), accorded the coastal State exclusive jurisdiction similar to that established in existing international law for the contiguous zone; the Committee would have to consider whether it was appropriate to extend that régime to the whole of the economic zone. Secondly, his delegation shared the view that article 2, paragraph 2, was drafted in too broad terms. Clearly, any State could participate in the exploitation of an agreed level of the living resources of the zone, subject to special agreements, but there was no need to state that in the convention. Moreover, as drafted, the provision was ambiguous.

48. In general, his delegation could accept the provisions on the economic zone set forth in the nine-Power draft articles (A/CONF.62/L.4); article 12 (a) seemed particularly appropriate.

49. With regard to the question of delimitation between opposite or adjacent States, the draft articles submitted by Kenya and Tunisia (A/CONF.62/C.2/L.28) seemed a good basis for discussion.

50. His delegation wished to repeat that it was prepared to consider, in a regional or subregional framework, the aspirations expressed in the Jamaican proposal (A/CONF.62/C.2/L.35). However, it had reservations about the use of the term "geographically disadvantaged States"; its favourable attitude towards the proposal was due to the inclusion, specifically in article 5, of criteria for determining which States might receive special treatment.

51. Mr. KOLOSOVSKY (Union of Soviet Socialist Republics), commenting on the draft articles submitted by the socialist countries (A/CONF.62/C.2/L.38), noted that the Soviet delegation had repeatedly stated in the sea-bed Committee that the establishment of economic zones would have undesirable consequences for many countries, especially the geographically disadvantaged States and those having no outlet to the sea. Substantial harm would also be sustained by the Soviet Union and a number of other countries whose fishing industries depended on distant-water fishing on the high seas. However, his country was ready to proceed towards the establishment of such zones, having in mind the desire of many coastal developing countries to raise their standard of living and to strengthen their national economies. The interests of all other States and peoples would have to be taken into account in the establishment of economic zones, since they too had an interest in the rational utilization of marine resources. In formulating its position, his country was guided by the fact that it was important for the strengthening of peace that the Conference should reach mutually acceptable decisions on questions affecting the vital interests of many countries. His delegation wished to stress that its readiness to recognize the right of a coastal State to establish an economic zone of up to 200 miles and its right to control the living and mineral resources of the zone was conditional on the simultaneous adoption of mutually acceptable decisions on the other basic questions of the law of the sea listed in the introduction to the draft articles.

52. The draft articles included a provision granting the coastal State sovereign rights for the purposes of exploration and exploitation of the living and mineral resources of the zone, including the right to determine the maximum allowable catch of fish and other living resources and to establish measures to regulate the exploitation of such resources. The aim was to give the coastal State not only guarantees of a durable raw materials base but also an opportunity to develop its fishing industry in a planned manner. Observance of the recommendations of international fishery organizations would

prevent or minimize any differences over questions relating to the living resources of the economic zone between the coastal State and neighbouring or other interested States. It would enable the coastal State to arrange mutually advantageous co-operation with the other countries and to reduce its own expenditures on the scientific research without which the rational operation of the fishing industry was inconceivable.

53. Since mankind was vitally concerned to utilize fish resources to the full, without of course jeopardizing their reproduction, it was unthinkable that those resources should not be utilized to the permissible extent or, what was worse, should simply be lost. Accordingly, the convention must include a provision requiring a coastal State which could not itself take 100 per cent of the allowable catch to authorize foreign fishermen to take the remainder. The developing coastal States should receive reasonable payment, either in cash or in other forms, for granting such authorization. It would be just to include in the convention a provision granting nationals of developing countries having no outlet to the sea, or only a narrow one, the right to fish in the economic zone of a neighbouring coastal State on an equal footing.

54. His delegation wished to point out that the granting of sovereign rights in the economic zone to the coastal State was not equivalent to the granting of territorial sovereignty and must in no way interfere with the other lawful activities of States on the high seas, especially with international maritime communications. The convention must state clearly that the rights of the coastal State in the economic zone must be exercised without prejudice to the rights of any other State recognized in international law, including the freedoms of navigation, overflight and the laying of cables and pipelines, and the freedom of scientific research not connected with the exploration and exploitation of the living and mineral resources of the economic zone.

55. The sponsors of the draft articles had not made excessive demands; they had taken into account the legitimate wishes of other States. They considered that the draft articles were reasonable and balanced and might form the basis of a mutually acceptable settlement of the question of fishing in the economic zone and of all the other important questions of the law of the sea. They hoped that the other participants in the Conference would display a similar spirit of reciprocity and goodwill.

56. Mr. FATTAL (Lebanon) said that one could not help but be startled, in looking at the world map, to see how the *mare liberum* was becoming closed off, compartmentalized and subjected to all sorts of prohibitions. Baudelaire had once compared the infinite expanse of the sea to man's free and infinite spirit, but modern man, weighed down by economic necessity was, like the sea, losing his freedom. The sea, instead of being placed under a régime of organized freedom, was being annexed and carved up. It should have been made the public domain of the world community and collectivized for the benefit of all mankind. That would have constituted real progress towards ensuring the survival of a rapidly growing world population.

57. His delegation had accepted the principle of a 200-mile economic zone with great reluctance, for such a zone in the Mediterranean would be meaningless. Nevertheless, it had not wanted to oppose the will of the great majority of States, which did not trust an international community controlled by the great maritime Powers.

58. The proposed definitions of the economic zone, and of the rights of States therein, presented the Committee with a superabundance of confusing variations. Despite long explanations from some representatives, his delegation found the legal nature of the economic zone and the patrimonial sea to be substantially the same. The two notions differed only in the extent of the rights which would be enjoyed under the one and the other.

59. The term "patrimonial sea" was inappropriate, for the economic zone to which it would refer was not something which the people of a given country had inherited from their forbears. It would be much more appropriate to use the term "common heritage of mankind", a concept which the Conference was supposed to promote but which seemed increasingly doomed to oblivion. The term "economic zone" should also be rejected if scientific research and preservation of the environment, which were not economic activities, were to be reserved to the coastal State in the area in question.

60. The various formulas which had been submitted were too theoretical. A pragmatic approach would have enabled delegations to view the issues with greater clarity and make more rapid progress.

61. The jurists at the Conference for the Codification of International Law held at The Hague in 1930 had conceived the idea of the contiguous zone to prevent the territorial sea from being broadened to 12 miles. Now the idea of the economic zone had been put forward to prevent the territorial sea from being broadened to 200 miles. But the contiguous zone had not served its intended purpose and it now appeared that the economic zone, instead of preventing the extension of the territorial sea, would simply replace both it and the contiguous zone. All the proposals which had been submitted contained the assurance that the freedoms of navigation, overflight and the laying of submarine cables and pipelines would not be infringed, but at the same time they provided that coastal States would administer the zone in a sovereign manner and thus subject it to their legislative and regulatory power. If those States exercised in the economic zone police power over security, maritime and air navigation safety, exploration, conservation and exploitation of resources, preservation of the environment and scientific research, what additional powers would they have in the territorial sea and the contiguous zone?

62. One illusory difference remained between the territorial sea and the economic zone: foreign ships would enjoy the right of innocent passage in the territorial sea and the right of free transit in the economic zone. But "free transit" itself had to be innocent, in that it could not be prejudicial to the interests of the coastal State in the zone. The freedom to lay cables and pipelines too would be limited by coastal-State regulations concerning security and pollution. Only the freedom of overflight, it seemed, would be unimpeded.

63. His delegation therefore thought that the position of the Latin American States which were advocating a 200-mile territorial sea and that of States which were claiming a 200-mile economic zone were very close to one another. The arguments of the former were at least clear-cut and frank, but those of the latter were not, since the economic zone would in reality be nothing other than an enlarged territorial sea.

64. There were two main schools of thought on the economic zone. Most of the Latin American, African and Asian States sought a highly centralized exclusive economic zone from which foreign States and the international community would be excluded, while the socialist and Western States sought a lesser concentration of power in the coastal State and would at least admit the international community, represented by an international organization. Mutual concessions and sacrifices would have to be made if those two trends were to be reconciled. He wished to suggest a compromise. Perhaps the economic zone could be made more acceptable if it were replaced by the idea of a contiguous fishing zone, such as that conceived of at The Hague Conference in 1930 and established by European and other States in the 1960's. In a high sea area adjacent to its territorial sea, the coastal State would exercise sovereign rights for the purposes of exploration and exploitation of all types of natural resources, and perhaps also with regard to scientific research and preservation of the marine environment. In these fields it could exercise the control necessary to prevent

and punish violations of its laws and regulations, which should be in conformity with certain international standards. The contiguous zone would not extend beyond 200 miles measured from the baseline of the territorial sea. The concept of the continental shelf, for the reasons which he had already set forth, would be eliminated.

65. That formula would have the advantage of being simple, general, abstract and impersonal, as all well-drafted legislation should be. It would settle the question of sovereignty in a reassuring manner, resolve a difficult problem of terminology, and omit the concept of residual rights.

66. The proposed compromise should include an obligatory procedure for peaceful settlement of disputes involving the zone and it should give land-locked States a more favourable status than that to which they were regulated in the Geneva Conventions.

67. Mr. BENCHERKH (Algeria) said that the economic zone was one of the fundamental elements in the future law of the sea. Algeria had no true interests of its own to defend through that concept, since it bordered on a semi-enclosed sea which lacked a continental shelf and was practically devoid of resources. Nevertheless, it understood the struggle of the peoples of most of the developing countries for the establishment and strengthening of the idea of the exclusive economic zone, and it therefore supported the zone without hesitation. By taking that position it felt that it would contribute to strengthening the solidarity of African countries and of third world countries in general, a solidarity which was not an abstract concept but was based on the desire to make the new rules of international law serve the purposes of development. The Organization of African Unity had already demonstrated such solidarity by adopting provisions in its Declaration of 1973 (A/CONF.62/33), which recognized the sovereign rights of coastal States and at the same time accommodated the interests of everyone by recognizing, for land-locked and other geographically disadvantaged countries, the right to have access to the economic zone and to benefit from its living resources on the basis of equality among all States of the region. Perhaps the Conference should follow that same path and give greater attention to the legitimate claims of such countries. In his delegation's view, that was the only exception allowable to the exclusive powers of the coastal State in the zone.

68. His delegation therefore rejected a number of arguments which, although couched in humanitarian language, concealed a dangerous tendency to perpetuate exploitation and domination. Apparently there were delegations which were still waging a last-ditch struggle the effect of which would be to make the rich richer and the poor poorer. There was a close historical analogy between the current struggle over the economic zone and the struggle of peoples who produced raw materials to retain control over them. The economic zone, as a progressive concept and a pillar of the new law of the sea, would help to correct the imbalances brought about by colonialism and imperialism.

69. The sovereign powers of the coastal States must be greatly expanded so as to include, for example, control of marine pollution and scientific research. Sovereignty was essential to development, and a mere right to regulate would in effect prevent the developing coastal countries from effectively benefiting from the resources of the zone. The economic zone was not an area of the high seas granted to coastal countries through the goodwill of the great Powers. The struggle to make the zone an established concept was a struggle to enable exploited peoples to benefit from marine resources of which they had always been deprived.

70. His delegation was aware that in putting the idea of the 200-mile zone into practice certain accommodations would be required, particularly with regard to enclosed and semi-enclosed seas and islands or islets situated in the zone. In that

connexion, he said that the proposals submitted by Kenya and Tunisia in document A/CONF.62/C.2/L.28, and by Turkey in document A/CONF.62/C.2/L.34, as also the Romanian proposal, had his delegation's full sympathy, as they set forth ideas which could lead to an equitable solution of the question of enclosed and semi-enclosed seas.

71. Mr. WEIDINGER (Austria) said the last few years had seen two conflicting tendencies: on the one hand there had been extensions of jurisdiction by a number of coastal States and on the other the emergence of the new juridical notion of "the common heritage of mankind", which had found universal acceptance. It was the task of the Conference to try to harmonize those opposing tendencies.

72. His country attached particular importance to the principle of the common heritage, which must not, however, be negated by the establishment of vast exclusive zones destined for the sole use of a limited number of States. The legitimate interests of all groups of States should be taken into account in elaborating new legal rules for the seas.

73. To that end, Austria, together with other land-locked or geographically disadvantaged States, had sponsored document A/CONF.62/C.2/L.33, which provided that a coastal State might extend its territorial sea up to a distance of 12 nautical miles. Austria's position had evolved considerably, for at the 1958 Geneva Conference it had still been strongly in favour of maintaining the traditional breadth of the territorial sea at 3 miles.

74. His country still had considerable doubts as to the wisdom of establishing an exclusive economic zone of 200 miles, which would detract from what it considered to be the common heritage of mankind. Nevertheless, it realized the need of many coastal States, in particular the developing ones, to secure better utilization of the resources of the seas adjacent to their coasts in order to provide for the livelihood of their peoples and further their economic development, and was therefore prepared to enter into negotiations on that concept. As far as the legal content of the proposed economic zone was concerned, Austria realized the need for the coastal State to exercise certain competences in that zone relating to the exploration and exploitation of its natural resources, but it believed that the zone should not become a *de facto* extension of the territorial sea. There should be a clear legal distinction between the two areas. Austria was therefore in favour of maintaining the legal concept of the contiguous zone, as spelt out in the relevant Geneva Convention,⁴ in those cases where a State decided for one reason or another not to extend its territorial sea to 12 miles. The contiguous zone should not, however, be extended beyond 12 miles into the economic zone.

75. If the concept of economic zones was adopted by the Conference, adequate account would have to be taken of the legitimate interests of the land-locked and other geographically disadvantaged States. He was glad to note that many delegations had already mentioned that necessity. Paragraph 9 of the Declaration of the Organization of African Unity on the issues of the law of the sea (A/CONF.62/33) would, if accepted, be a very important step towards satisfying the interests and needs of the group of States in question. However, his delegation categorically rejected the attempt in certain proposals relating

to the rights of land-locked and other geographically disadvantaged States to make an unjustified distinction regarding the stage of economic development of the States in question. That the distinction was unjustified was evident from the fact that such a differentiation was not made in relation to coastal States. Developed land-locked and other geographically disadvantaged States should enjoy, in relation to their developed coastal neighbours, the same rights as developing land-locked and other geographically disadvantaged States vis-à-vis developing coastal States. It could hardly be the aim of the Conference to exclude a small group of States from adequate participation in the exploration and exploitation of the riches of the seas. His delegation was therefore among the sponsors of document A/CONF.62/C.2/L.39, which set forth very clearly the rights which land-locked and other geographically disadvantaged States should have under the new convention regarding participation in the exploration and exploitation of the living and non-living resources of the zone of neighbouring coastal States. With respect to non-living resources, the proposal expressly provided that equitable arrangements for the exercise of that right should be made by the States concerned. The provisions concerning revenue-sharing made no distinction between coastal and land-locked States: any State that participated in the exploitation of the non-living resources should contribute a fair share of its revenues to the International Authority for the ultimate benefit, in particular, of the less developed members of the international community. In view of the envisaged extension of the rights of coastal States, land-locked and other geographically disadvantaged States should be entitled to participate equitably in the exploitation of resources of all kinds outside the territorial sea. Such participation, which could to a certain extent offset the disadvantaged geographical situation of those States, should therefore not be regarded as a privilege.

76. The draft articles sponsored by his delegation represented a regional or subregional approach and provided for participation only in the zone of neighbouring coastal States. The expression "neighbouring" should in his delegation's view be defined as referring not only to States adjacent to each other but also to States of the region situated within reasonable proximity to a land-locked or other geographically disadvantaged State. The purpose of his delegation's concept was to provide for co-operation between the coastal States and other less fortunate members of the different regions of the world. Rather than the notion of an exclusive economic zone, his delegation would prefer the concept of an integrated economic zone, benefiting all members of the same geographical region. The past few years had witnessed a trend towards economic co-operation and integration in various parts of the world, which should also cover the seas. A concept based on nationalistic seclusion would be a step backward. His delegation's concept was more in conformity with modern economic policy than was the establishment of a great many exclusively national economic zones, which would be tantamount to balkanization of much of the sea.

77. His delegation hoped that the coming negotiations would lead to a solution which would give all States, great or small, coastal or land-locked, developed or developing, the right to participate on an equal and non-discriminatory basis in the exploration and exploitation of the resources of an economic zone in their respective regions.

The meeting rose at 1.05 p.m.

⁴Convention on the Territorial Sea and the Contiguous Zone (United Nations, *Treaty Series*, vol. 516, p. 206).

29th meeting

Tuesday, 6 August 1974, at 3.15 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Exclusive economic zone beyond the territorial sea (concluded)

[Agenda item 6]

1. U KYAW MIN (Burma) said that political, economic and technological developments since the Second World War had introduced certain qualitative changes in the traditional law of the sea which could be described as resource-prompted and resource-oriented. The traditional law of the sea based on the doctrine of freedom of the seas had resulted in a régime of *laissez-faire* over the natural resources of the oceans beyond the territorial sea which had benefited only those capable of exploiting them at the expense of the overwhelming majority of countries. That régime had become outdated and should be replaced by a new legal system under which each and every State would be entitled to its rightful share of ocean resources.
2. To that end it was necessary to establish clearly defined legal rights of resource ownership in clearly demarcated areas of ocean space. That was precisely the aim of the exclusive economic zone concept and the complementary concept of the common heritage of mankind; one would establish in a zone adjacent to the territorial sea a régime of sole coastal State ownership and jurisdiction primarily over resources, and the other a régime of collective ownership and jurisdiction in the area seaward of that zone. In the view of his delegation a future convention should preserve the essential distinction between those two concepts in order adequately to meet the divergent needs and interests of States. To blur that distinction, let alone destroy it, would undermine the very basis of the convention and thus jeopardize its viability.
3. Certain proposals, such as those calling for preferential rights only for coastal States in their economic zones, legalization of what their proponents described as traditional fishing rights but which were essentially prescriptive rights, and as such should have no place in modern international law, compensatory rights, compulsory sharing of revenues or the designation of the sea-bed resources of a continent as the common property of that continent, constituted an attempt to graft the concept of the common heritage of mankind on to the concept of the exclusive economic zone. The adoption of any of those proposals would create legal confusion in the seas and sow the seeds of conflict between States. It could also have dangerous consequences for coastal States, particularly those lacking the physical power to defend their rights.
4. The essential principle of the exclusive economic zone, namely, exclusive coastal State sovereignty over the resources of maritime zones adjacent to its coast, was not new to international maritime law. It was clearly inherent in the concept of the territorial sea and explicitly sanctioned under the Convention on the Continental Shelf.¹ It was that essential principle which would be seriously undermined if any of the proposals in question were adopted. A great deal had been said about the so-called process of creeping jurisdiction, but the possibility of that process working in reverse was seldom mentioned. Bearing that possibility in mind, his delegation firmly believed that the rights and powers of the coastal State in the exclusive economic zone should be upheld in law as supreme.
5. His delegation shared the view that the economic zone should extend to an outer limit of 200 nautical miles measured from territorial sea baselines and that within that limit, the

coastal State should have exclusive sovereign rights over all living and mineral resources. Those rights should be coupled with exclusive regulatory, control and management powers over resource conservation, protection of the environment and scientific research. The provisions of the régime of the continental shelf, which represented a higher régime than those envisaged for the patrimonial sea and the economic zone, should be made applicable to the subjacent sea-bed of the zone regardless of depth and to that part of the continental margin extending beyond the outer limit of the zone.

6. His delegation was sympathetic to the requirements of those States whose economies were largely dependent on sea fisheries and was aware of the need to ensure optimum utilization of fishery resources in the economic zone. However, it considered that coastal States should have the legal right of decision with regard to practical arrangements in respect of those matters.

7. Referring to the delimitation of the boundaries of exclusive economic zones between States, he expressed the view that equidistance boundaries were by definition arbitrary and did not take account of the physical features of the sea-bed. Recalling his statement on the continental shelf at the 18th meeting, he said that in situations where the application of the equidistance rule would result in the economic zone of one State overlapping the natural prolongation of another State, the natural prolongation principle should be determinant for the purpose of delimiting the sea-bed boundary. Moreover, in such situations the epi-continental sea concept might be applied to determine the boundaries of the water column in order to ensure that the jurisdictional boundary of the sea-bed coincided with that of the water column, thereby obviating disputes, particularly over the ownership of bottom fish.

8. His delegation strongly supported in principle proposals aimed at establishing objective criteria whereby small oceanic islands and island groups would not be entitled to claim disproportionately large areas of resource jurisdiction to the detriment of the rights and interests of neighbouring States. It also supported the view that isolated islands and outlying islets should not qualify as base points in determining the breadth of the exclusive economic zone and the jurisdictional boundaries between States. His remarks did not apply to archipelagic or island States and were not intended to prejudice the rights of those States in any way.

9. Mr. LAPOINTE (Canada) said he wished to reply to those delegations which had expressed doubts and fears concerning the possible effect of the exclusive economic zone on the delicate balance which should be maintained between coastal States and the users of the ocean.

10. The head of his delegation had outlined his country's position on the concept of the economic zone at the 46th plenary meeting, when document A/CONF.62/L.4 was tabled. As defined in that document, the economic zone was not an international zone within which the coastal State was allocated certain privileges. It was the zone of national jurisdiction where the acquired rights of the coastal State over the mineral resources of the continental shelf, and, so far as possible, certain rights and privileges which vessels had previously enjoyed on the high seas, would be maintained. New rules would be formulated with regard to exclusive coastal State management of the biological resources in the zone and the participation of non-coastal States in the exploitation of those resources.

¹ United Nations, *Treaty Series*, vol. 499, p. 312.

11. The exclusive economic zone was not just a question of resources. It also included the rights and duties of the coastal States to protect the marine environment and control scientific research. It was not merely a matter of bargaining between rights over resources and navigation rights. The coastal State should have the right to utilize and preserve resources adjacent to its coasts since the survival or development of its people depended on those resources and because it was in the best position to regulate their rational exploitation. That necessarily entailed the acquisition of rights to protect those resources with regard to pollution and scientific research. The economic zone further implied that the marine environment of the coastal State and its security should be adequately protected. The rights of the coastal State in the economic zone could not therefore be limited exclusively to resources.

12. The sponsors of document A/CONF.62/L.4 had been criticized for not providing full details of the practical consequences of the concept of the economic zone. With regard to fishing in particular, the working paper had been expected to spell out proposals for a definitive solution of the numerous and complex problems relating to that subject in the future convention on the law of the sea. While the document was not so ambitious, it did imply that the exercise by the coastal State of its sovereign rights in the zone in respect of fishing should not automatically exclude non-coastal States. The waste of biological resources which would result from such an interpretation could not be justified at a time when there was a world shortage of protein. On the other hand, the exclusive character of the economic zone meant that the coastal State would henceforth have a decisive voice with regard to the management of the biological resources in its zone. It could determine the proportion of the catch which it should receive and regulate fishing methods to ensure an adequate level of production and it could allow others to fish in the zone on equitable conditions which would take due account of its interests.

13. The provisions of document A/CONF.62/L.4 did not remove the coastal State's obligation to observe certain management principles with regard to conservation, such as the principle of maximum utilization of resources. They did not prevent coastal States from seeking regional or international assistance in certain technical fields such as the evaluation of stocks. The economic zone was not a zone of residual rights in favour of the coastal State.

14. The only way out of the existing impasse was to engage without delay in genuine negotiations on the practical problems related to the reasonable exercise by the coastal State of its rights and not on the rights themselves, as some delegations were attempting to do in the guise of proposals to establish institutions or multilateral regulations.

15. Mr. ZULETA TORRES (Colombia) expressed his condolences to the people of Bangladesh following the recent flood disaster in that country.

16. He said that the concept of a 200-mile exclusive economic zone, combined with a 12-mile territorial sea, for the purposes of exploring and exploiting the renewable and non-renewable natural resources of the superjacent waters, the sea-bed and subsoil thereof, had received the support of an overwhelming majority of the international community; it could accordingly be considered an irreversible trend in the new law of the sea, since it was the only formula that reconciled the interests of the coastal States with those of the international community.

17. He wished to respond to certain objections and reject certain conditions formulated by a number of developed countries, especially in connexion with the fisheries régime, scientific research and the preservation of the marine environment.

18. With regard to fisheries, it had been stated that the developing countries were not able to utilize the whole—or in some cases even a part—of the available catch, and that a régime should accordingly be established in favour of the de-

veloped countries enabling them either directly or indirectly to indicate to the coastal State its maximum fishing capacity and to require it to permit fishing by foreign vessels. That somewhat paternalistic argument was aimed at making the exclusive economic zone a hollow concept. The fact was that many independent scientific studies had concluded that only the coastal State was in a position to apply the necessary conservation measures and plan the development of ocean species.

19. The developing countries needed to establish and develop their fishing industry, but in order to do so they must be certain that the fishery resources would remain theirs and that the fishing fleets of the big Powers would not deplete fish species by indiscriminate fishing. Only the State that assumed responsibility for fishery development programmes could have the legal capacity to control fishing in its economic zone, especially since none of the major fishing Powers were interested in co-operating in the development of the fishing capacity of the coastal State.

20. Those who argued in favour of preserving the freedom of scientific research—a noble aim, at first sight—overlooked one fundamental fact: within its economic zone, the coastal State must be entitled at least to ascertain the nature of the research and to participate on an equal basis in the results thereof. The developing countries had no wish to hamper research; but neither were they prepared to permit the exploration of their resources and pollution of their waters on the pretext that it was in the interests of science. It was almost an insult to the developing countries—a vestige of the paternalistic mentality of certain great Powers—to attribute to them a whimsical desire to impede the progress of marine sciences.

21. As to the preservation of the marine environment, no State claimed to have absolute control over the pollution of its own waters. A balance must be struck between the right of the coastal State to prevent pollution and the interests of the international community. The future convention must take into account that coastal States had duties as well as rights.

22. His delegation therefore took the view that the provisions of document A/CONF.62/L.4 that related to the economic zone struck a balance between the sovereign rights of the coastal State over its resources and its rights and duties with regard to the preservation of the marine environment and scientific research. Those provisions therefore constituted an acceptable framework for a consensus. However, unless there was a sincere desire to reach agreement, the next session of the Conference would be nothing but an academic exercise.

23. Mr. ARAIM (Iraq) expressed his condolences to the Government and people of Bangladesh following the recent flood disaster in that country.

24. In connexion with the item under discussion, he noted that the stage had been reached where all States must try to accommodate the interests of the international community. At the same time, the interests of land-locked and other geographically disadvantaged States must be provided for in the future convention, since they could not be safeguarded by bilateral or multilateral agreements alone. He was gratified to find a growing tendency to recognize that necessity. In the implementation of that convention, regional arrangements were vital.

25. He considered that document A/CONF.62/C.2/L.39, of which his delegation was among the sponsors, could form a basis for negotiations. He emphasized that the provisions of article 5 of that document did not apply to those States which were unable to extend their economic zone to the limit to be agreed upon in the proposed convention; it therefore did not apply to the geographically disadvantaged States.

26. His delegation hoped that the principles embodied in that document would be taken into consideration in the informal working paper which would set forth the main trends with

regard to the topic under discussion. As in the case of the continental shelf, his delegation took the view that the exploration and exploitation of the living and non-living resources of the economic zone should not affect the freedom of the high seas.

27. Mr. MAIGA (Mali), emphasizing the need for international solidarity to eliminate the growing disparity between the developed countries and those of the third world, said that the concept of the exclusive economic zone—which had the support of the large majority of States—could be considered one means of establishing a new legal order under which the resources of the sea would constitute a new area of co-operation and economic development.

28. The economic zone had been conceived with a view to fostering the development and well-being of the peoples of the world, particularly those of the developing countries, whose resources in the zone adjacent to their territorial sea had been plundered for centuries. The new legal order, based on equity, would eliminate the inequalities of geography between the coastal and the land-locked States, the intention being to transform the land-locked developing countries and other geographically disadvantaged countries into real partners in development. It was logical for those countries to be granted the right to exploit the biological resources of the economic zones of the coastal States—not in a spirit of paternalism, but rather in the conviction that the results would be of benefit to all.

29. For some, the exclusive economic zone was merely a smoke-screen to conceal the extension of the territorial sea, in contravention of the general principles of international law. For others, the economic zone was a simplistic formula that

did not take account of the interests of all States. Without wishing to enter into polemics, his delegation wished to point out to those who held such ideas that international law must be freed from its shackles in order to take account of the political and social realities of the time. In a society that knew no special privileges, the law of the sea must undergo a revolution rather than an evolution. The domination of the big Powers over the sea, designed to preserve their economic, political and military interests, must be replaced by a new order in which the sea would become an instrument for peace, justice and the welfare of the economically less advanced countries. Existing rules and principles that accentuated the gap between the developed and developing countries must be abolished. Such a revolution was interpreted by some as detrimental to their rights; but the task of the Conference was to formulate a law acceptable to all.

30. Stressing the continuing need to reconcile divergent interests, he recalled his delegation's statement at the 38th plenary meeting, during the general debate. Social justice and respect for human dignity must prevail, in accordance with the principles of the Charter.

31. In his delegation's view, document A/CONF.62/C.2/L.39 would constitute an acceptable framework for an agreement.

32. The CHAIRMAN announced that the discussion on item 6 had been concluded.

33. Mr. ABBADI (Secretary of the Committee) announced that the delegation of Mali wished to be added to the list of sponsors of document A/CONF.62/C.2/L.39.

The meeting rose at 4.05 p.m.

30th meeting

Wednesday, 7 August 1974, at 11.10 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Coastal state preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea

[Agenda item 7]

1. Mr. BOTHA (South Africa) said that his delegation supported a uniform 12-nautical-mile territorial sea beyond which, within the exclusive economic zone, the coastal State should exercise exclusive rights over the living resources.

2. With an annual catch of well over 1 million metric tons, South Africa was a major fishing country and had a vital interest in the concept of the exclusive economic zone, particularly with regard to fisheries. South Africa was in a position similar to those countries whose natural living marine resources were being depleted by foreign vessels with little or no regard for rational exploitation. Vessels from 11 foreign States had, during the past decade, ruthlessly expanded their onslaught on the large but not unlimited stocks off South Africa's coasts. Despite warnings by qualified scientists, the valuable hake resource in the south-east Atlantic was now being fished beyond the maximum suitable yield and attempts to rationalize the international fishing off South Africa's coasts through existing international bodies had met with little success. His delegation therefore supported the view that the coastal State should have exclusive jurisdiction over the living marine resources in the 200-mile economic zone since that was the only way to guarantee adequate protection from irrational exploitation. Furthermore, his delegation supported the right of a coastal State to adopt adequate conservation measures to ensure enforcement of its control regulations within the zone

including, where necessary, the impounding of foreign vessels and the prosecution of their crews in the courts of the coastal State.

3. His delegation agreed that if a coastal State was unable to exploit its fisheries resources fully, other States should be allowed to share in the exploitation of those resources on a non-discriminatory basis. Without necessarily recognizing the so-called traditional fishing rights of foreign States in the zone, the coastal State should have sole discretion in that regard and should regulate such fishing activities by means of bilateral or multilateral agreements. Quotas to foreign fishing vessels should be allocated under licence and should be reviewed and adjusted regularly in accordance with scientific evidence as to the state of the stocks and the coastal States' fishing capability. Furthermore, any accommodation of neighbouring land-locked States in the sharing of the living resources of the sea should be effected by means of equitable bilateral agreements.

4. Highly migratory and other living resources of the high seas beyond the limits of national jurisdiction should be managed and controlled by competent international bodies, for example, the International Whaling Commission and the International Commission for the Conservation of Atlantic Tunas. In such cases, the competence and the enforcement capabilities of such bodies should be considerably strengthened to achieve the desired results.

5. His delegation believed that because of their unique life history, anadromous species required special management treatment. The control and management of such species should

be the sole responsibility of the coastal State in whose rivers they spawned. From a purely scientific viewpoint, it was highly desirable that only the "spawning" State should be given the right to exploit the resource which it alone maintained. His delegation, however, believed that equitable bilateral agreements could be entered into in order to accommodate, within reason, other States to which such anadromous stocks might be of vital interest.

6. Finally, his delegation supported the continued activities of the existing international fisheries commissions. Those commissions provided an excellent forum for the transfer of marine technology, which his delegation strongly supported.

7. Mr. JEANNEL (France) introduced the draft articles contained in document A/CONF.62/C.2/L.40. Although the sponsors had wished to introduce the document under item 6, they were doing so under item 7, but wished it to be clearly understood that the draft articles did not constitute a document on preferential rights. In preparing the articles, an effort had been made to go beyond the conflict between exclusive and preferential rights. Among the sponsors were representatives from coastal States and from States with long-distance fishing interests. The positions of countries dependent on fishing but with very limited resources and the position of the developing countries had also been taken into account; the whole document was the result of more than two years' work. The result was not spectacular and was unlikely to be greeted with great enthusiasm, but it represented the conclusion of the first really thorough study of fishery questions.

8. The draft articles contained a complete system of basic regulations and the provisions required to enforce them. A regional approach had been taken to conservation issues because it had been felt that a coastal State approach was too limited.

9. The most important article of the draft was article 8, which must, however, be considered in conjunction with articles 2, 3, 7, 13 and 19. The provisions of article 8 operated at three levels: under paragraph 1 the coastal State was empowered to grant its nationals fishing rights in its zone but, under paragraph 2, it would have to recognize certain fishing rights of specified categories of foreign fishermen in the zone; paragraph 3 reinforced the States' prerogatives concerning such rights.

10. Provision for States members of customs unions was made in article 23.

11. The document before the Committee was a complicated one that would require very careful study by delegations which had not participated in the preparation. The sponsors would welcome constructive criticism and were conscious of the fact that there was room for improvements and additions.

12. Mr. MUKUNA KABONGO (Zaire) said that the Conference was considering three areas: a 12-mile territorial sea; a 200-mile economic zone and the high sea itself. The idea of the contiguous zone was useful but unnecessary.

13. His delegation supported the approach to the exclusive economic zone set out in paragraphs 6 to 10 of the Declaration of the Organization of African Unity on the issues of the law of the sea (A/CONF.62/33). Permanent sovereign rights over the living and mineral resources of the zone were an expression of a country's permanent sovereignty over its natural resources. He stressed the importance of the principle of regional solidarity: some of the geographically disadvantaged States had a legitimate claim to certain historical rights. Of equal importance was the principle set out in paragraph 10 of the Declaration. The new law to be established must balance the interests of all States in order to be an instrument of international justice and must be based on international consensus. The concept of the economic zone was one that met the requirements of the times. In order to ensure ratification of the convention, the internationalization of the continental shelf beyond the 200-mile limit must be accompanied by a guarantee in the

convention that all States would have access to the resources of the area. The exploitation of the resources of the international area would be the responsibility of the international community; and that responsibility would be vested in the International Sea-Bed Authority to be established.

14. In summary, his delegation's position was that the economic zone was a zone in which the coastal State exercised sovereign rights and where geographically disadvantaged countries also had rights in the context of regional solidarity. Exclusivity should be given a regional and subregional meaning, particularly for the under-developed countries. Countries with advanced fishery technologies would have access to the economic zone without discrimination but must obtain the prior consent of the coastal State. The concept of the economic zone would replace the concept of the contiguous zone; within the economic zone the coastal States would exercise traditional jurisdiction in fiscal, immigration, marine pollution and scientific research matters.

15. Mr. FERGO (Denmark) said that the attempt to find a balanced and reasonable regulation of fisheries was one of the most difficult and complex problems before the Conference. The different global interests in fisheries were, to some extent, reflected within the structure of the fishing industry in Denmark. In each of the three geographically separated parts of the country, namely Denmark, Greenland and the Faroe Islands, the industry had its own characteristics and its own important role in the economy. Denmark was among the 10 largest fish-producing countries of the world and fish and fish products played an important role in its total exports and made a major contribution to local economies in coastal and sparsely populated parts of the country. Denmark was situated in an area with relatively narrow waters where fishing by all countries of the region had historically taken place close to the coasts of neighbouring countries. In 1972, the main part of Denmark's total catch had been taken by Danish fishermen from continental Denmark, mainly in the North Sea and the Baltic Sea. His delegation believed that the fishery régime in an area with such geographical characteristics should take due account of the historical pattern of fishing which had, for a long period, functioned to the satisfaction of the countries concerned. In such areas, there should be the possibility of maintaining and establishing regional arrangements.

16. Greenland's geography and the scarcity of alternative employment opportunities there made its population heavily dependent on the sea for its livelihood. While Greenland's fishing industry was based mainly on coastal fishing, its fishermen were faced with great difficulties as some of the main stocks had, in recent years, declined seriously owing to changes in the Arctic climate and intensive fishing by modern foreign fishing vessels in Greenland's waters. In order to restore Greenland's fish stocks and to develop its fishing industry, it was necessary to reserve a larger part of the living resources for local fishermen.

17. The Faroe Islands' fishing exceeded the catch of many foreign States and more than 90 per cent of the Islands' exports were fish products. They were therefore heavily dependent on fishing both in coastal waters and in distant waters and, in order to survive as a modern community, those barren oceanic islands must be given the chance by the international community to fish in waters outside their own.

18. His delegation fully recognized the need for coastal developing countries to extend their fishing zones up to 200 miles from the coast and it was with that recognition in mind that his delegation had, together with the other sponsors, submitted the draft articles in document A/CONF.62/C.2/L.40. That document took into consideration the fact that the structure of fishing industries and geographical conditions varied from region to region and the main idea in the proposed new fisheries régime was to give the coastal State the right to extend its fisheries zone over a wide area of the coastal waters. The

coastal State should at the same time take account of other legitimate interests, particularly the right of other States in the same region, traditional fishing rights and the special needs of developing countries and those countries or regions whose populations were entirely dependent on fisheries for their livelihood.

19. The coastal State had a major responsibility for rational exploitation and conservation of fish stocks. However, since the living resources of the sea moved from one region to another, the conservation measures must be international in nature and it was for that reason that the draft articles emphasized the importance of the regional fisheries organizations.

20. His delegation did not agree with others which had suggested that the exploitation of anadromous species should be regulated in the convention. The most appropriate manner of dealing with those specific questions was to regulate them within the international fisheries organizations among the countries directly involved.

21. His delegation conceded that the draft articles were rather detailed, but it believed that any proposal which sought to take account of all the divergent and conflicting interests of countries must necessarily be somewhat elaborated. The proposals were meant to serve as a basis for discussion and he hoped that other delegations would see them as a genuine attempt to find balanced solutions in the interests of the world community as a whole.

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

22. Mr. LING Ching (China) said that the item on preferential rights had been imposed on the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction by the two super-Powers in order to oppose the proposal by the developing countries for the establishment of exclusive economic zones. His delegation, which fully supported the proposal for a 200-nautical-mile exclusive economic zone, was opposed to the attempt by the super-Powers to limit the legitimate exclusive rights of the coastal States or to deprive them of those rights by introducing preferential rights in a disguised form. The professed recognition of the economic zone, while attempting to impose "preferential rights", made a mockery of the demand by several countries of the third world for the establishment of an exclusive economic zone. The draft articles on the economic zone submitted by the Soviet Union and other countries (A/CONF.62/C.2/L.38) were an example of such an attempt and his delegation firmly opposed it.

23. The theoretical basis for the denial of coastal States' exclusive jurisdiction over the economic zone, as set forth in the draft articles, was the assertion that the economic zone which fell within the scope of national jurisdiction should be treated as part of the high seas. If the economic zone were truly part of the high seas, there would be no point in discussing the establishment of such a zone and the coastal States would then have to submit to the will of the super-Powers which monopolized the high seas. Furthermore, the document provided that each State might freely carry out fundamental scientific research unrelated to the exploration and exploitation of the living or mineral resources of the economic zone. His delegation wondered whether there could be any fundamental scientific research in today's world that was not related, directly or indirectly, to specific military or economic purposes. It might also be asked what were the criteria for determining what kind of scientific research was related to the exploration and exploitation of resources and what was unrelated. It was common knowledge that the same super-Power which had sponsored the draft articles, on the pretext of "fundamental scientific research" or "freedom of scientific research", constantly sent large numbers of "research vessels" or "fishing fleets" equipped with electronic devices into the coastal waters of other countries or beneath those waters for the sole purpose of carrying on espionage activities.

24. The 11 articles under section II of the Soviet draft were limitations on the sovereignty of the coastal State over fishery resources. It could be said that in that section, which was the main body of the draft, the theory of "preferential rights" was most fully elaborated. For example, assertions that the maximum annual allowable catch of fish should be determined in accordance with the recommendations of international fishery organizations and that fishermen of foreign States should be allowed to fish for the unused part of such allowable catch were aimed at peddling the preferential rights being advocated.

Those assertions had long been refuted by the developing countries and the only reason for that super-Power to make them again was that, regardless of the radical changes in the situation, it was determined that there should be absolutely no change in its vested hegemonistic interests and its policies of aggression and plunder.

25. Articles 15 and 16 of the draft arbitrarily provided that the coastal State should grant foreign vessels permission to fish in its economic zone while giving priority to none other than the so-called States which had borne considerable material and other costs of research, discovery, identification and exploitation of living resource stocks, or which had been fishing in the region involved. Investigations showed that from the late 1950s to the early 1970s, at the same time as the military expansion of that super-Power on the seas and oceans had been stepped up, its distant-water fishing activities had increased substantially. In the past decade the average annual catch of its distant-water fishing had accounted for three quarters of its total annual catch. Furthermore, it had not hesitated to spend large sums of money to build fishing vessels of high tonnage, applying new fishing technology for the purpose of intruding into the sea areas of coastal States in order to carry out exploration and outright plunder. Its indiscriminate fishing was eloquent proof of the real intention of the sponsor of the draft articles. Furthermore, that super-Power, which had professed concern for the interests of the land-locked States, had placed itself ahead of the land-locked States for a share in the ownership of the resources found in the economic zone.

26. Finally, his delegation reiterated that it resolutely supported the proposal by the developing countries for the exclusive economic zone and was firmly opposed to the underhanded attempt of the super-Powers to substitute so-called preferential rights for the essential contents of the exclusive economic zone.

27. Mr. ANDERSON (Iceland) said that, in the view of his delegation, the concept of the preferential rights of the coastal State and that of the exclusive economic zone represented two successive stages in the development of the law of the sea.

28. The systems which the first and second Geneva Conferences on the Law of the Sea had sought to establish in 1958 and 1960 could briefly be described as the formula of 6 plus 6—a territorial sea of 6 miles and an additional zone of 6 miles for fishery limits. At both Conferences, the Icelandic delegation had adopted the position that the 12-mile fishery limits were not adequate and had proposed that, at the very least, preferential rights should be granted to coastal States where the population was overwhelmingly dependent upon coastal fisheries for its livelihood. That proposal, although adopted in committee at both Conferences, had not received the required two-thirds majority in plenary meetings. Iceland had also expressed the view that the resolution on special situations, adopted at the 1958 Conference,¹ which provided for agreements on preferential rights between neighbouring States, could in no way be regarded as a substitute for exclusive fishery limits. The Conferences had also assumed that conservation measures would be prescribed by agreement between the States concerned, and

¹ *Official Records of the United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. 58.V.4), vol. II, *Annexes*, document A/CONF.13/L.56, resolution VI.

that if the total allowable catch was not sufficient to satisfy all their requirements, a quota system would be arranged through regional agreements.

29. During the preparatory proceedings leading up to the Conference, his delegation had consistently urged that a clear distinction should be made between the conservation of resources and the allocation of resources. It had maintained that all States were under a binding obligation to apply proper conservation measures, that regional and international co-operation was required for that purpose, and that the institutions concerned should therefore be strengthened. Its views in that regard were largely consistent with the decisions taken at the Geneva Conferences; but its position on the allocation of the resources in coastal waters was radically different. To say that all States should co-operate in conservation measures and then to apply a quota system for the allocation of coastal resources not only was misleading but also ignored the very purpose of fishery limits, which was to reserve coastal fishery resources for the benefit of the coastal State as an integral part of its natural resources. Hence the exclusive economic zone concept had emerged and relegated the system of preferential rights to history.

30. In cases where a coastal State was unwilling or unable to utilize the living resources within its exclusive economic zone, it should, of course, be allowed to issue licences to other States on reasonable terms. But that was a matter which must be decided by the coastal State itself and not by any third party. The very essence of the exclusive economic zone concept was that such matters must be decided by the coastal State and not by others, as had been the practice in the past.

31. Viewed against that background, the proposal in document A/CONF.62/C.2/L.40 was unacceptable because it sought to perpetuate the old system. Articles 4 to 8 of that draft provided for a zone beyond the territorial sea where the coastal State was entitled to reserve for itself that part of the allowable catch which its vessels were able to take, but must give consideration to the right of access of other States, particularly those which had habitually fished in the zone. Under article 9, a coastal State must notify the competent organization of its intentions in that respect, and if there was no agreement, the dispute would be referred to a special committee. It could be seen therefore that the system envisaged by the sponsors of document A/CONF.62/C.2/L.40 was in no way compatible with the concept of the exclusive economic zone; in fact, it was little more than a reincarnation of the old Geneva system. The draft articles in document A/CONF.62/C.2/L.38 appeared at first sight to reflect a more realistic approach.

32. The delegations of the Federal Republic of Germany and the German Democratic Republic had quoted the judgment of the International Court of Justice of 25 July 1974² as an argument for perpetuating "historic" or "traditional" rights within the exclusive economic zone. However, paragraph 53 of that judgment unmistakably revealed the Court's reluctance to anticipate the conclusions of the Conference. The Court had not wanted, even if it had been able, to give any instructions to the Conference concerning the exclusive economic zone, and since the Conference had resoundingly supported the economic zone concept, it was clear that the preferential rights system now belonged in the past.

33. Mr. MOLODTSOV (Union of Soviet Socialist Republics) said that his delegation supported the recognition of preferential rights of coastal States over anadromous species outside the economic zone. That position was reflected in article 20 of document A/CONF.62/C.2/L.38.

34. Anadromous fish were unique in that they returned, after lengthy migration in the oceans, to the fresh waters in which

they had been spawned. The most numerous of the anadromous fish—salmon—spawned once and then died in the spawning reaches. On many occasions, non-rationalized fishing had led to the complete extermination of the fish stock from a given river. As a result, the costly efforts by the coastal State to renew and manage stocks were completely fruitless. Serious social problems, such as the need to relocate specialized fishermen and their families, then arose.

35. The proper approach was to grant the coastal State in whose rivers anadromous fish spawned sovereign rights over anadromous species and all other living resources within the economic zone, and preferential rights outside the zone in the migration area of anadromous species. Foreign fishing for anadromous fish should be on the basis of agreement between the coastal and other States concerned, bearing in mind, particularly, that it was the coastal States that were really in a position to assess and regulate the numbers of fish going to the spawning ground and to catch them without prejudicing the regeneration of the fish stocks.

36. Clearly, States that participated jointly with the coastal State in measures to regenerate anadromous fish stocks should have preferential fishing rights, as should States that had traditionally fished for those species.

37. One delegation had just spoken in terms that grossly distorted the USSR's position as set out in document A/CONF.62/C.2/L.38. Reserving the right to deal with the fabrications contained in that statement at an appropriate time, he made the following comments.

38. The basis of a solution to the acute and complex problem of fishing in the world oceans must be the principle of reconciling the just interests of all States and peoples in the rational use of valuable marine food resources, their renewal and conservation. He recognized the particular interest of the developing countries in those resources, which would help to raise the level of living and well-being of their peoples and to consolidate their economic and political independence. Those principles were the basis of the draft articles, article 2 of which, giving the coastal State sovereign rights over all living and mineral resources in the economic zone, had not been mentioned by the delegation in question. Article 12 also provided for broad powers of coastal States deriving from the recognition of their sovereign rights in the economic zone—a fact that the representative in question had passed over in silence because it did not suit his delegation's unseemly objective of distorting the position of the sponsors of the document. Other articles in the draft were intended to protect the interests of other States interested in the rational use of the living resources of the world oceans, in keeping with the Soviet Union's endeavour to find a solution acceptable to all countries. That representative had also falsely said that the Soviet assertion that the economic zone was part of the high seas was somehow aimed at preserving a state of affairs in which Soviet fishing and research vessels could continue to engage in espionage in the world oceans.

39. Where had that representative obtained such false information? Clearly, the only way to determine what foreign fishing and other vessels were doing on the high seas would be for that representative's country to engage in true espionage on a wide scale. That delegation was systematically distorting the USSR's position and slandering the USSR. It was doing its utmost to grab the leadership of the Conference, particularly among the countries of the third world, which it wanted to see quarrelling with many socialist countries. But it was not succeeding in its hegemonistic intentions. What infuriated it was the spirit of constructive work prevailing at the Conference. Those hegemonistic intentions were also being rebuffed outside the Conference. Many States of the third world had long come to understand that behind the flattering words spoken by the representatives of that country lay a thirst for power and leadership. That country's true intentions were clearly shown by the

² *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland)*, Merits, Judgment, I.C.J. Reports 1974, p. 175.

fact that it had made territorial claims, including claims on the sea, against most of its neighbours and did not stop short of using brute force to press those annexationist claims. Anti-Soviet and slanderous statements were a cover-up for those unseemly hegemonistic policies. The delegation he referred to was motivated not by a desire to work constructively but by a determination to plunge the Conference into an abyss of dissension and quarrelling. He expressed confidence that the Conference would not allow itself to be diverted from carrying out its tasks.

40. Mr. ARIAS SCHREIBER (Peru) said that his delegation's position concerning the régime for fisheries in the waters adjacent to coastal States was radically different from that of the maritime Powers. It was common knowledge that one of the main reasons for the establishment of zones under national jurisdiction up to 200 miles in breadth was to enable coastal States to regulate and control their fisheries. To subject fishing in coastal waters to international regulations would defeat that objective.

41. The rights exercised by the coastal State with regard to the exploration and exploitation of renewable resources must be basically the same in both the territorial sea and the economic zone or patrimonial sea. In both areas, the coastal State should be entitled to adopt the necessary regulations for the administration and conservation of its renewable resources and to establish enforcement procedures. That power must belong exclusively to the coastal State by virtue of the rights vested in it within the zones under its national jurisdiction.

42. The foregoing explained why those countries which favoured a territorial sea or national economic zone extending up to 200 miles had not deemed it necessary to include provisions on fisheries in the draft articles they had prepared.

43. The maritime Powers, on the other hand, were afraid that the omission from the future convention of general rules concerning fisheries might lead other coastal States to promulgate measures that threatened their interests. Their fears were partly justified; the development of fishing industries and activities by all coastal States in their adjacent waters could be expected to restrict the activities of distant-fishing fleets. However, to assert that some countries must always play the role of "leaders" and others of "subjects" was entirely unreasonable and, furthermore, was tantamount to attempting to arrest a natural and inevitable historical process. While the fact that the coastal State had powers to regulate the exploration and exploitation of the renewable resources in its adjacent waters would affect certain maritime Powers, they should have the integrity to admit that they were defending their own interests, instead of claiming that they were protecting the interests of the international community. Were the 12 or so maritime Powers engaged in distant fishing the only members of that community? The developing coastal States could far more validly argue that they had the interests of the international community at heart by wishing to extend the limits of their maritime jurisdictions, thus promoting the development and well-being of their peoples. However, they deemed it more honest to speak of the interests of certain States vis-à-vis the interests of other States.

44. While it was true that the activities of distant-fishing fleets would be adversely affected by the extension of zones under national jurisdiction, none the less such enterprises could either continue fishing operations after concluding agreements with coastal States, or, since they were generally wealthy, transfer their attention to other fishing areas. Moreover, they were relatively few in number. The beneficiaries of wider zones, on the other hand, would be many: the inhabitants of a majority of countries who fished for their livelihood; the workers in related industries; and the population as a whole, for whom such zones represented more food, more jobs and better levels of living. The merits of both arguments must be weighed in order to determine whose rights were the more compelling:

those of the distant Powers or those of the coastal States in whose adjacent waters the resources were to be found.

45. The international community also stood to gain from the extension of the zones under national jurisdiction, since the result would be more coastal fishing and hence cheaper fish. Competition between fleets from different States raised the prices of fish products, and the cost of the catch was in direct ratio to the distance travelled by the fishing vessels. It was therefore difficult to see how the proposals of the developing coastal States could adversely affect the interests of the international community. The unjust system was the existing one; fortunately its end was in sight, whether or not the new ideas held by the majority gained the support of the few who were still unwilling to change it.

46. His delegation was prepared to consider the establishment of an equitable and lasting legal order for the use and exploitation of the sea and, together with the delegations of Ecuador and Panama, it had submitted to the sea-bed Committee draft articles on the management of living resources within zones of national jurisdiction, conditions for access by nationals of other States, the conservation of resources, enforcement procedures and the settlement of disputes (A/9021 and Corr.1 and 3, vol. III, sect. 44). It was currently preparing, together with other delegations, some more draft articles which would supplement those basic principles; it should be possible to introduce them in a few days' time.

47. Peru believed that the coastal State should manage the living resources whose normal habitat lay off its coast or whose life cycle was dependent upon the ecological system of the adjacent waters. It also believed that the coastal State had the right and duty to adopt and enforce any measures required for the conservation of its living resources. In the matter of conservation, the coastal State should co-operate with other States and bear in mind the recommendations of regional and international organizations.

48. Peru had always been in favour of allowing the nationals of other countries to fish for species which were not fully exploited by the fishermen of the coastal State provided that the relevant regulations were respected and that their activities did not interfere with the development of local industries or domestic consumption. It was therefore favourable to such participation by nationals from land-locked and other geographically disadvantaged countries under agreements with the coastal State. It went without saying that the coastal State had sole authority to enforce control measures within the zone under its national jurisdiction.

49. With regard to document A/CONF.62/C.2/L.38, he said that although his delegation appreciated the efforts of the sponsors in submitting draft articles on the economic zone, it did not believe that the articles could provide an adequate basis for a satisfactory agreement.

50. In conclusion, he said that his delegation had come to the Conference with the intention of assisting in the formulation of a new law of the sea which would correct past inequities and bring to an end the privileges of a handful of Powers. Although it was still prepared to participate constructively in the quest for reasonable solutions, there were limits to its tolerance. Peru had exercised its sovereignty over a 200-mile zone off its coast for almost 30 years. It had punished law-breakers, faced up to threats and coercive measures, and successfully developed its fishing and related industries. It was not therefore prepared now to renounce its rights or its achievements or to accept the conversion of its national waters into an essentially international zone, in which foreign fishing fleets could exploit the resources for the benefit of wealthier and more powerful nations.

51. Mr. LING Ching (China) observed that one delegation had said that its position had been distorted by China. Did that mean that that delegation wished to state that it endorsed the

exclusive economic zone concept? The same delegation had alleged that China pursued hegemonistic aims, but the records showed that that was not true. As for espionage activities, he would not attempt to refute its assertions for the facts spoke for themselves and were too numerous to recount on the present

occasion. That delegation did not convince anyone. It was a case of the same old tune, on the same old record, played by the same old gramophone.

The meeting rose at 12.40 p.m.

31st meeting

Wednesday, 7 August 1974, at 3.25 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Coastal state preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea (concluded)

[Agenda item 7]

1. Mr. LEGAULT (Canada) said that he wished to present some further elaborations on document A/CONF.62/L.4 with regard to fisheries.

2. Under current conditions, the exercise of the traditional freedom of fishing could lead to a total collapse of fishing resources. A policy of wise management was therefore needed. Within its economic zone, the coastal State must have the right to ensure the conservation of fishery resources in accordance with agreed principles. One of those principles was the full utilization of fish stocks, since in a hungry world waste could no longer be justified. The coastal State must also have the right to take all the fish it was capable of using, on its own terms and under conditions which would permit the expansion of its fisheries. The coastal States should and, no doubt, would allow foreign States to take the portion of the allowable catch which it was itself incapable of using, subject to the sovereign rights, management, control and regulations of the coastal State. Special consideration should be given to the needs of neighbouring States in a region, especially the developing and land-locked States. Only in that way would fishing resources and the interests of coastal communities which depended on those resources be protected. The concept of an economic zone provided for such rights of a coastal State over its living resources.

3. Where stocks of fish lived both within and beyond the economic zone, scientific management required that such stocks be managed as a whole. The draft articles on fisheries (A/9021 and Corr.1 and 3, vol. III, sect. 27) which Canada had sponsored, together with three other delegations, in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction in 1973, offered such an approach.

4. Effective conservation measures were needed with regard to anadromous species such as salmon, including regulations to protect the fishes' environment so as to permit spawning. Regulations should require that the fish be harvested at an appropriate size and age so as to obtain the maximum benefit. Special conservation and management measures to protect the fresh-water environment where those fish spawned and where man's activities were a constant threat to them were also needed. Salmon were born in fresh water and returned to their place of origin. Scientific evidence demonstrated that the salmon's growth at sea continued in the estuaries as it returned to spawn. Yields would be highest therefore if salmon were caught close to their home streams.

5. The maintenance of clean, unobstructed rivers was a basic prerequisite for the continued production of salmon. Pollution in rivers, estuaries, and inland waters, as well as off-shore pollution, was a real threat especially to young salmon. Only the State of origin could protect the fresh-water habitat of the

species, but such action entailed high expenditures and sacrifice in the form of research, fisheries administration, and the loss of the benefit of other uses of those waters. In Canada alone the cost was in the hundreds of millions of dollars. Therefore provisions should be made to take into account the special interests of States of origin, like Canada, in the total management of anadromous species in their rivers. Such provisions could be harmonized with the interests of other coastal States, and his delegation was willing to take into account existing arrangements provided that they respected the special interests of the State of origin.

6. Mr. BEN ALEYA (Tunisia) said that the developing countries had sought the inclusion of an item on preferential rights in the agenda of the sea-bed Committee in August, 1972 as a temporary compromise in the hope that countries which still had doubts about the new concept of the economic zone would with time come around to accepting it. Since that time, many countries, including the great Powers themselves, had demonstrated much goodwill in coming around to accept the exclusive sovereignty of coastal States over the resources of the economic zone. His delegation had therefore been surprised by the submission of document A/CONF.62/C.2/L.40 by eight countries of the European Economic Community which in effect took away any meaning from the exclusive economic zone.

7. The sponsors of that document apparently wished to perpetuate an anachronistic situation and to ignore the other drafts submitted to the Conference aimed at establishing a new order in accordance with the aspirations of the majority of the world's peoples.

8. A certain paternalism towards the developing countries was also discernible in that draft. The developing countries, however, had consulted among themselves and adopted a common position both within the Organization of African Unity and the Second Committee. Their legitimate aspirations should therefore have been taken into account by the sponsors.

9. Those draft articles on fisheries contained provisions particularly favourable to the developed countries and to the rights they had acquired in the fishing zones of coastal States. The document was unacceptable and could not serve as the basis for any negotiations. In particular, articles 8, 9 and 12 were not acceptable to his delegation, and he urged delegations which had unequivocally endorsed the concept of the exclusive economic zone to study them closely.

10. The draft articles made mention of regional co-operation. His delegation had already endorsed such co-operation and was ready to promote it on a regional level for the benefit of all States and in particular the land-locked and developing countries. However, for such co-operation to be effective and willingly accepted it was necessary to recognize the interests and rights of every country, including the right of sovereignty over the resources of the economic zone.

11. The preamble of the document stated that the draft articles did not necessarily reflect the final views of its sponsors.

His delegation hoped therefore that those final views would be formulated with a greater sense of justice and realism.

12. Mr. OGUNDERE (Nigeria) said that together with the issue of the limit of the territorial sea, the resolution of the fisheries issue would in all probability determine the success or failure of the Third United Nations Conference on the Law of the Sea. The rate of world population growth, especially in Africa, was so high that developing States were turning to the resources of the sea in the hope of feeding their populations and earning foreign exchange for their development projects. It was not surprising therefore that they regarded the distant-water fishing fleets of the great maritime Powers with feelings of envy and anger. Moreover, such feelings were not confined to the developing world as the "Cod War" between the United Kingdom and Iceland in the late 1950s had demonstrated.

13. Since the fisheries in its coastal waters were rather poor and its population large, Nigeria had the greatest interest in the orderly resolution of the fisheries question on the basis of justice and equity. Nigeria and all the other African States had endorsed the exclusive economic zone as a just basis for the resolution of the fisheries issue. His delegation was confident that African coastal States with rich fisheries off their coasts would allow neighbouring land-locked States to exploit surplus stocks on a mutually agreed basis.

14. His delegation had submitted draft articles on the exclusive economic zone in document A/CONF.62/C.2/L.21/Rev.1, which established in article 1 the exclusive rights of the coastal State to explore and exploit the renewable living resources of the sea and the sea-bed. The draft articles also contained provisions for the exclusive right of the coastal State for the management, protection and conservation of the living resources of the sea and the sea-bed, taking into account the recommendations of the appropriate international or regional fisheries organizations. Article 2 provided for the competence of all States, subject to an appropriate bilateral or regional arrangement or agreement, to exploit an agreed level of living resources of the zone. Paragraph 3 of that article recognized the right of land-locked and geographically disadvantaged States to explore and exploit the living resources of the exclusive economic zones of neighbouring coastal States subject to appropriate bilateral or regional arrangements or agreements. Such provisions were in line with the Declaration of the Organization of African Unity on the issues of the law of the sea (A/CONF.62/33).

15. His delegation viewed with regret and dismay the proposal of eight States of the European Economic Community (A/CONF.62/C.2/L.40). Those draft articles smacked of neo-colonialism since they were based on the premise that the coastal States were forever under-developed, incompetent and incapable of managing such complicated matters as their coastal fisheries. The legal régime of preferential rights which that document would establish would take away from poor coastal States their means of livelihood. Articles 1, 7, 8, 9, 13, 14 and 16 provided evidence to support that conclusion. As an embodiment of the outmoded coastal State preferential rights system, the proposal in the document should be definitely rejected.

16. The proposal of six socialist States (A/CONF.62/C.2/L.38) embodied various acceptable provisions such as articles 1, 2, 8, 12 and 13. Other provisions were particularly unacceptable, for example, articles 5, 11 and 14.

17. The exclusive economic zone was a zone in which the coastal State had all the rights and competences, including ancillary ones to explore and exploit all the resources, whether living or non-living, and to enact laws to regulate those activities. His delegation considered inadmissible any provisions of a convention which sought to transfer any of those rights in any form to other States.

18. Mr. VINDENES (Norway) said that the inclusion of the question of preferential rights as a separate item in the list of subjects and issues had led to a certain amount of confusion and misunderstanding since in practice that question was inseparable from the question of economic zones. Economic zones and preferential rights represented alternative answers to the question of coastal State rights to the resources of the sea in an area adjacent to the territorial sea. The Norwegian delegation clearly favoured the economic zone.

19. The draft articles in document A/CONF.62/C.2/L.40 were substantially closer to the preferential rights system than to the economic zone concept. Despite the fact that those articles made use of the term "the zone" which was of yet undetermined breadth and listed certain rights for the coastal State within that zone, a closer examination of key articles revealed that very little remained of the zonal approach.

20. Although paragraph 1 of article 8 provided that, in its zone, the coastal State might reserve for vessels flying its flag that portion of the allowable catch they were able to take, paragraph 2 eroded that right by specifying that the coastal State should take into account the right of access of States which had habitually fished in the zone, which led to the inescapable conclusion that the rights of States which had habitually fished in the zone did not relate merely to that part of the allowable catch which exceeded the fishery capacity of the coastal State. Thus for the purpose of allocating the allowable catch, the distant-water fishing fleets of other States were on an equal footing with the fishing fleet of the coastal State itself.

21. All decisions of the coastal State relating to the implementation of provisions of the draft articles would be subject, if challenged, to a special committee of five members whose decisions would be binding on the parties concerned, not only with regard to decisions on allocation, but conservation measures as well. Given the lack of precision of the legal norms which the special committee would have to apply, it would become more of a regulatory body than a judicial tribunal. His delegation therefore rejected the mandatory reference of disputes arising from the exercise of coastal State rights to a third party judgment of the type proposed in the draft articles in question.

22. Article 12, relating to the enforcement powers of the coastal State, further illustrated the divergence between the economic zone approach and that of the draft articles. Even in cases of flagrant violation of its regulatory regulations, the coastal State would not normally be able to prosecute offenders. It could only report the case to the flag State in the hope that the latter would take the necessary action. Norway's experience in that connexion gave little reason for confidence in such a procedure.

23. The initial reaction of his delegation to the draft articles on the economic zone contained in document A/CONF.62/C.2/L.38 was that they were a constructive contribution to the work of the Conference, while undoubtedly many provisions required further elaboration, clarification and negotiation. Acceptance of the formula in article 12 whereby the coastal State should determine the allowable annual catch of each species in accordance with the recommendations of the competent international fisheries organization amounted to a relinquishment by the coastal State of a right it already held, under the statutes of the regional fisheries organizations concerned, to declare itself not bound by the recommendation of those organizations. Given the danger that the organizations concerned could with the necessary two-thirds majority recommend a total allowable catch higher than that considered responsible by the coastal State, his delegation would not be prepared to accept a formula which made such recommendations automatically binding. A coastal State must be free to introduce stricter conservation measures in the economic zone than those considered necessary by the regional organization.

24. Mr. KUMI (Ghana) said that the item under consideration was of vital importance to his delegation as Ghana relied

heavily on fishing as a means of livelihood and a source of food. He therefore supported the concept of the exclusive economic zone, which recognized the competence of the coastal State over the resources of that zone and placed fishing in the zone under the jurisdiction of the coastal State. Although he did not oppose the formulation of rules and regulations governing fisheries, he stressed that such provisions should not defeat the purposes for which the economic zones were to be established. He questioned the need for the consideration of item 7, for he agreed with the representative of Iceland who had said at the preceding meeting that the concept of preferential rights was supported only minimally by historical usage. He also pointed out that the Declaration of the Organization of African Unity on the issues of the law of the sea did not envisage the economic zone as part of the high seas. It was important to defend the interests of land-locked States, developing coastal States and other disadvantaged States by giving them rights in the economic zones of neighbouring coastal States. Those States which relied heavily on fishing close to the coasts of other States should be granted licences, which should, however, be granted on reasonable conditions, unlike the old colonialist agreements. One condition could be that the State wanting to fish would provide technology to the coastal State concerned. He welcomed the pragmatic approach taken in provisions for regional and subregional agreements on fishing. There was a need for special provisions for migratory and anadromous species and also for special provisions to prevent the disappearance of certain species. Any such provisions should, however, be in keeping with the principle of the economic zone and the principles embodied in the Declaration of the Organization of African Unity.

25. Mr. GUSTAFSSON (Finland) recalled that his delegation had already stated its views on fisheries in the sea-bed Committee. A substantial part of fishing in Finland took place in the Baltic Sea in the vicinity of the coast of Finland; fishing vessels thus usually exploited only those stocks which were close to, or within, the 4-mile territorial sea, although some vessels were engaged in herring fisheries in the North Atlantic. The Baltic Sea area was a disadvantaged region and all or most of the States bordering on it were disadvantaged. He believed that individual States in a disadvantaged region should be entitled to participate in the exploitation of the living resources of the economic zone to be established in respective regions, as proposed in document A/CONF.62/C.2/L.39, which was sponsored by 21 delegations including his own. Fishing in the Baltic Sea was important for Finland and, in order to secure the fishing industry and facilitate its development, his Government had recently proposed that a fishery zone be established to a maximum limit of 12 miles from the baseline of the territorial sea, thus providing an 8-mile fishery zone.

26. In that connexion he noted that the "package deal" would probably provide for a maximum 12-mile territorial sea. Within that zone a State might decide to exercise only limited sovereignty, for example by establishing a fishery zone. Such a zone would not be in the same category as the economic zones to be established beyond the 12-mile limit, and he hoped that the future convention would state that in a specific article. He regarded such a provision as being as important as the inclusion of the rules of the Geneva Convention on the Territorial Sea and the Contiguous Zone,¹ which had been suggested by some representatives.

27. The freedom of fishing, for coastal and non-coastal States, listed as one of the freedoms of the high seas in the Geneva Convention on the High Seas,² should be upheld in any future convention on the law of the sea. However, careful management was needed to maintain fish stocks, and that should be provided by regional and sectoral fisheries organiza-

tions. Such organizations existed in most areas, but the powers of the various fishery commissions were not extensive enough.

28. Referring to documents A/CONF.62/C.2/L.38 and 40, he noted that article 1 of the second document reaffirmed the existing international law that all States should have the right to allow their nationals to engage in the exploitation of the fishery resources of the sea, which was, in his view, an essential provision. The interests of States which had habitually fished in the coastal State's fishery zone and the interests of developing and land-locked countries were taken into account in article 8 in a way that partly met the concerns of his delegation. Special provisions were included for coastal States whose economy depended heavily on fisheries. Regional arrangements and regional and sectoral organizations were also dealt with in the draft articles of document A/CONF.62/C.2/L.40. Regional organizations should be given a position of importance in order to achieve rational and efficient management of fisheries to ensure the maintenance of maximum yield and the conservation of fish stocks.

29. Commenting on the draft article contained in document A/CONF.62/C.2/L.37, providing for the regulation of the exploitation of anadromous species through agreement among interested States or through the appropriate intergovernmental fisheries organizations, he said that the interests of the State of origin and the interests of other coastal States should be taken into account. He believed that the draft article provided the basis for a fair compromise on that matter.

30. Mr. BAYONNE (Congo) observed that there was a very close link between the question of fisheries and that of the economic zone, the solution of the first question depending on the solution of the second. For example, protection of the living resources of a coastal State could be envisaged only within the framework of a 200-mile maritime zone placed under its sovereignty. Documents A/CONF.62/C.2/L.38 and 40 confirmed that view, for they reflected the concern of the sponsors to maintain hegemony of the seas, continue plundering the resources of the developing countries and maintain imperialist and neo-colonialist domination; those two paternalistic drafts were unacceptable to his delegation. If accepted, they would simply institutionalize the intense pressure of major fishing States on the new fishing industries of developing countries. Sixty per cent of the total fish catch in 1970 had been caught by a few developed countries accounting for one third of the world population, while the other two thirds of the world population had had only 40 per cent of the total fish catch. The fishing industries of developing countries constituted a major element of the development effort, and were to be used to raise the standard of living, increase food supplies and provide new employment. The provisions in the drafts before the Committee, however, did not meet those concerns but would simply increase the gap between the developed and developing countries.

31. M. BARILE (Italy) reaffirmed his delegation's position that the economic zone was that part of the high seas beyond the territorial sea in which the coastal State had certain specific economic rights. His delegation was one of the sponsors of document A/CONF.62/C.2/L.40 which gave coastal States special rights and provided for the implementation of the basic principle of the exploitation of the resources of the sea for the benefit of mankind as a whole, and particularly for the benefit of the developing countries.

32. His position on the contiguous zone was related to his concept of the economic zone. The rights of the coastal State in the economic zone would be purely economic, while its rights in a much more restricted zone would relate to national security, customs, taxation, health and immigration, and the right to guarantee the protection of its territory. If the breadth of the territorial sea was to be reduced and a contiguous zone established beyond it, it should be stated very clearly that the coastal State had different competences over the different parts of the

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

² *Ibid.*, vol. 450, p. 82.

high seas beyond its territorial waters. It would have rights and competences with regard to the protection of its territory in the contiguous zone, while it would have rights and competences with regard to the protection of its clearly defined economic interests in the economic zone measured from the outer limit of the territorial sea. The concept, and the functions of the contiguous zone and the economic zone were thus very different.

33. The CHAIRMAN announced that the debate on item 7 had now been concluded.

Contiguous zone (*concluded*)*

[Agenda item 3]

34. Mr. GOERNER (German Democratic Republic), introducing document A/CONF.62/C.2/L.27, of which his delegation was a sponsor, said that the draft article on the contiguous zone in that document reflected the current international law in force. Its wording was identical to that of article 24 of the Geneva Convention on the Territorial Sea and the Contiguous Zone. The basic idea of the concept of the contiguous zone was to provide protection for the legitimate interests of coastal States which did not wish to extend their territorial sea to a breadth of 12 nautical miles. It was thus clear that the establishment and recognition of contiguous zones was closely connected with the breadth of the territorial sea. Since every coastal State was entitled, under generally recognized international law, to establish a 12-mile territorial sea in which it exercised full sovereignty, it would seem logical that coastal States which claimed a territorial sea of less than 12 miles should have the right to exercise individual sovereign rights for the protection of their legitimate interests in a zone stretching for 12 miles measured from the baseline. The concept of the contiguous zone was thus based on the voluntary renunciation by some States of the exercise of their sovereign rights and was not directed against the interests of any other State.

35. With respect to the rights of the coastal State in the contiguous zone, he said they should include the right to control customs, immigration, fiscal and sanitation regulations. The regulations governing the contiguous zone would not affect the right of the coastal State to utilize the living and mineral resources in the zone adjacent to its territorial sea if the concept of the economic zone was incorporated in the new law of the sea.

36. He could not accept the proposal that coastal States claiming a territorial sea of 12 miles should establish a contiguous zone adjacent to that territorial sea. The exercise of rights such as control of customs, immigration, fiscal and sanitary regulations should be restricted to an area of 12 nautical miles, in the form of the territorial sea or the territorial sea and contiguous zone. Any additional exercise of those rights could seriously interfere with international communication and the freedom of navigation. It was also important that the internationally recognized rights of other States should not be prejudiced by the application by the coastal State of the legal régime of the contiguous zone. With respect to the delimitation of the contiguous zone, he said that the rules of delimitation contained in article 24 of the 1958 Geneva Convention had stood the test of practice; failing agreement between opposite or adjacent coastal States, the principle of the median line should be applied.

37. Mr. HERRERA CACERES (Honduras) said that the contiguous zone had been established as a means of limiting the extent of the territorial sea while recognizing certain competences with regard to the defence of the rights of States in the light of technical progress in navigation. The contiguous zone was regarded as part of the high seas and the competences recognized in that maritime space were formulated essentially to meet the requirements of the development of shipping.

38. However, circumstances had changed. There appeared to be consensus with regard to the acceptance of a 12-mile territorial sea, which inferred that complementary competences in the contiguous zone were no longer necessary, since such competences now formed part of the inherent territorial rights of States which established a 12-mile territorial sea and, although different in form, were of the same nature as the rights of such States over their land territory. Furthermore, the concept of the contiguous zone would no longer be necessary when the reasons for its establishment were adequately safeguarded under the concept of the sovereignty of the coastal State over its territorial sea.

39. The extension of the breadth of the territorial sea was also one of the basic issues before the Conference and a future convention should contain provisions relating to coastal States' claims to inherent rights over the resources in zones adjacent to their land territory. A decision should be reached concerning competences which would be maintained even when the traditional concept of the contiguous zone, conceived as the high seas, disappeared.

40. It was necessary to take account of legislation enacted by certain States relating to the establishment of a contiguous zone beyond the 12-mile territorial sea and also of certain competences which were traditionally linked with the concept of the contiguous zone and which were a necessary functional corollary to certain of the States' rights. The inherent right of a State over the resources of its adjacent zones was one of those competences. His delegation considered that the traditional concept of the contiguous zone should disappear on the establishment of an exclusive economic zone because the original concept of the contiguous zone in the high seas could not be applied to a special zone which was neither territorial sea nor high seas. However, his delegation would not oppose the maintenance of a contiguous zone within the economic zone to a limit of 6 or more miles measured from the seaward boundary of the territorial sea to a limit that could be no more than 18 miles. In that case, special competences should cover all mandatory measures concerning ships in passage to the maritime territory of a coastal State.

41. He stressed that the disappearance of the traditional concept of the contiguous zone or the emergence of an updated concept of that zone would not affect the functional competences of the State in the control, protection and exploitation of its resources and that together with the competences relating to fisheries and the exploitation of resources, protection of the marine environment, control of scientific research and the security of the coastal State, they formed part of the set of competences deriving from the inherent sovereign rights of a State over its continental shelf and over the resources in zones adjacent to its territory. The right of hot pursuit would also need to be redefined in a functional manner.

42. Mr. AL-NIMER (Bahrain) said that he would confine his remarks to the contiguous zone and to the utilization of living resources in the area beyond the territorial waters. He agreed with the view that the establishment of a contiguous zone for particular purposes beyond the territorial waters of a coastal State was not inconsistent with the concept of an exclusive economic zone since the latter, as its name implied, would be an area in which the utilization of resources and other economic matters were the sole concern.

43. A coastal State's rights in the contiguous zone were of a functional and protective nature. As indicated in article 24 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, the coastal State's powers were confined to the control necessary to prevent infringement of its customs, fiscal, immigration and sanitary regulations and the punishment of infringements of such regulations, which were often committed under cover of the commendable principle of freedom of the high seas.

*Resumed from the 9th meeting.

44. The contiguous zone was not a new concept in international sea law. As far back as the seventeenth century, States had had to resort to it in order to enforce their customs and fiscal regulations. Objections to the concept, over the years, had been motivated by fears lest its misuse should interfere with the traditional freedom of navigation on the high seas. But there were no grounds for such fears as long as the freedom of navigation was regulated by an acceptable and universal convention on the law of the sea.

45. The contiguous zone was very important to coastal States, particularly in areas where there were wide divergences in the prices of commodities and precious materials or where foreign labour was attracted by better pay or working conditions. Many developing States did not possess the modern technical equipment or the large coastal fleets to protect the whole of their territorial belt from smugglers and infiltrators and to intercept suspicious vessels before they broke through into the territorial zone.

46. His delegation considered that the régime of the contiguous zone, in accordance with article 24 of the 1958 Geneva Convention, should be maintained; and that its limit should be extended to a distance of 12 miles beyond the territorial waters of the coastal State, in view of the current trend to extend the breadth of the territorial sea and the great advances in the speed and construction of modern ships. The ratio between the contiguous zone and the territorial sea would then be almost the same as the ratio formerly adopted and recognized by international law.

47. His delegation appreciated the anxiety of many countries, in particular the developing ones, to use the resources of an economic zone to ensure the livelihood of their inhabitants and the development of their economy. However, it had already referred, in connexion with the continental shelf, to the difficulties of allocating economic zones in geographically disadvantaged areas. It was estimated that 68 coastal States—54 of which were developing States—would rank as disadvantaged with regard to economic zones. His delegation agreed with the many delegations which urged that such inequities should be corrected. It considered that, at least in semi-enclosed seas, and without prejudice to the wishes of friendly neighbouring States, the traditional freedom of fishing beyond the territorial waters of the coastal States or their islands should be maintained for all the nationals of States surrounding such seas, until such time as those inequities had been corrected by mutually accepted regional and subregional arrangements.

48. Mr. FRASER (India) asked that the variant proposed by his country, which appeared in the report of the sea-bed Committee (A/9021 and Corr.1 and 3, vol. IV, p. 47), should be included in the informal working paper on the contiguous zone. The figure 30 should be inserted in the space before the words "nautical miles" in paragraph 2.

High seas

[Agenda item 8]

49. Mr. GALINDO POHL (El Salvador) said that the régime of the high seas had been built up on the basis of customary standards, many of which had been codified in the 1958 Convention on the High Seas. The regulations concerning navigation, overflight and the laying of cables and pipelines were still relevant to contemporary conditions, though they would need adjusting to ensure that such operations did not adversely affect the marine environment: that was a problem that concerned not only the high seas but marine space as a whole.

50. The regulations on suppression of piracy and slavery, criminal jurisdiction in the case of collision, the obligation to provide assistance, inspection, and hot pursuit were established practices which needed little modification except in respect of any new zones—such as the economic zone and the international sea-bed area—that might be included in the new convention.

51. The issues that had to be considered and resolved were: the limits of the high seas; the regulation of fishing; the coastal State's interests in the part of the high seas adjoining its economic zone in so far as the preservation of species and the protection of the marine environment were concerned; and the other freedoms referred to in the last paragraph of article 2 of the 1958 Convention on the High Seas.

52. That Convention defined the high seas as "all parts of the sea that are not included in the territorial sea or in the internal waters of a State". The new convention should define them as "all parts of the sea that are not included in the internal waters, the territorial sea or the economic zone of a State".

53. Fishing in the high seas must be governed by regulations that would meet the new circumstances created by current technological development, with its threat of exhausting species. Such regulations could be based on the provisions of article 2 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas,³ which defined such conservation as "the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply to food and other marine products". That would entail prohibition of fishing methods destructive to the species and organization of fishing on the basis of objective scientific data to avoid over-exploitation. Access of all States without discrimination to fishing in the high seas should be expressly assured, with the proviso that it should not result in over-exploitation, depletion or destruction of the resources. Consideration should be given to fishing both in surface and in deep waters, since with the technological advances which had made fishing possible in the deep waters throughout the high seas, it was no longer a valid argument that most edible fish were to be found in waters that were under coastal State jurisdiction.

54. Special regulations would be needed in certain cases, for example in that of anadromous species, since the investment of certain States which had provided suitable nursery conditions must be recognized; however, it should also be borne in mind that such species moved through all the seas and grew and fed in the high seas. Any preferential rights should be very clearly defined if their scope was not to be in doubt. A number of the proposals on anadromous species, submitted to the sea-bed Committee, while feasible on paper, would in practice give rise to controversy because of their lack of precision. A technical study should be made on the applicability of any such rules. The same applied to the proposals concerning the catadromous species.

55. Some of the proposals which had been submitted to the sea-bed Committee and were being considered by the Conference reproduced rules compiled by the International Law Commission in the draft convention prepared for the 1958 Conference.⁴ The proposals concerning the rights and duties of the coastal State concerning conservation, contained the sea-bed Committee's report (A/9021 and Corr.1 and 3, vol. IV, p. 144) were based on a territorial sea and a contiguous zone which together did not exceed 12 miles. With the introduction of a 200-mile economic zone, the situation had changed completely.

56. The high seas should remain the high seas and no State interests should be recognized in them. The only interests recognized should be those of the organized international community, which must not be confused with the unorganized international community representing only the interests of certain States. Such interests would be looked after by appropriate international management. With regard to freedom of the high seas, no reference to the other "freedoms recognized by the general principles of international law", in article 2 of the

³ *Ibid.*, vol. 559, p. 286.

⁴ *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, para. 33.

1958 Convention on the High Seas, was to be found in the International Law Commission's draft, which mentioned only freedom of navigation, fishing, and the laying of cables and pipelines. However, it was clear from the text that that list was not intended to be exhaustive, and he felt that the Commission's text was sufficiently flexible and precise to cover the legitimate uses of the high seas. However, the reference to "other freedoms" inserted by the 1958 Conference in article 2 was not appropriate, for it might be interpreted too broadly. It was preferable to list all the freedoms of the sea in question, so as to avoid too wide interpretations, as for example had arisen in the 1960s, when there was a desire to interpret the term so as to justify atomic testing. Those who supported other freedoms of the sea should explain what other uses of the sea they wanted to protect by means of the wording that had been introduced in 1958.

57. Mr. WARIOBA (United Republic of Tanzania) said that, on the assumption that the purpose of rational management of the living resources of the seas was to serve the interests of mankind, in terms of both conservation and allocation, he would support a system that would ensure fair distribution of living resources to mankind as a whole—not merely to a small minority. He might submit specific proposals at a later date.

58. Regarding conservation, the existing system was hopelessly inadequate. Emphasis had been placed, both in the seabed Committee and at the Conference, on the application of international regulations. That would suggest that there had been a successful trial of the application of international regulations, but the facts were otherwise. The so-called international regulations were made and applied by so-called international commissions or under so-called international conventions which were not in fact international in the sense understood at the Conference. Those commissions and conventions served only a few States whose main interest was not conservation but exploitation of the fish stocks of a region. They were sometimes called regional commissions or conventions, but the term "regional", too, had varying connotations. Certain States were carrying on activities in nearly every region: it was hard to believe that they would concern themselves with situations in countries thousands of miles away, in regions other than their own, for the primary purpose of conservation. Their primary motive was exploitation pure and simple: conservation occurred to them only after they had plundered resources to the point where they were seriously depleted. That trend must be stopped: the priorities should be reversed, so that conservation would come first.

59. As to how the so-called international regulations were made and applied, the first step was scientific research, usually carried out under the auspices of States, which meant that while most scientists did commendable work they were sometimes hampered by terms of reference designed to serve national interests. The scientists then met under the auspices of the so-called international commissions, their scientific objectivity again in danger of being compromised by national interests, and made recommendations which, if applied, would facilitate conservation. In order to be applied, however, those recommendations had to be accepted by States. In most cases, either they were rejected by some States and thus became inapplicable, or acceptance took so long that application became ineffective for conservation purposes. Even where they were ultimately accepted, enforcement measures were so ineffective that the regulations remained a dead letter and served only the purposes of propaganda.

60. The real power of enforcement lay with the flag States and so far their performance had been very poor. So many obstacles were put in the way of inspection that it became meaningless. Inspectors were often biased and protected national interests rather than those of mankind as a whole. Moreover, their function was normally limited to verifying whether an offence had been committed, whereas their most important

duty should be to prevent offences from being committed in the first place. Worse still, inspection could not be carried out at the crucial moment, namely, when fishing was taking place: the inspector had to wait, even if he believed an offence was being committed. Finally, inspectors were not allowed to inspect below deck or even to inspect the type of fishing gear being used. He had studied the enforcement schemes of some of the so-called international commissions and had been amazed to find that the people who emphasized international regulations were the self-same people who refused to allow proper inspection of their vessels.

61. In the few cases where violations were reported, action was left to the flag State. Apart from the difficulty of proving a case in a forum far away from the scene of the offence, the fact was that the authorities of the flag States had shown no inclination to take adequate action to encourage conservation. Indeed, their behaviour had led to acts on the part of fishermen that bordered on piracy. Fishermen did not comply with the regulations on allowable catches in the waters of the high seas; the institution of closed seasons or areas was impracticable and control of gear and techniques was almost impossible. Fishing in the high seas had become piracy and plunder. In that connexion he welcomed the statements by United States Senators Muskie and Stevens which had been reported in the press.

62. Urgent and effective international action was needed. Management of the living resources of the high seas must be placed under effective international control. Scientific research should be conducted under the auspices of an international institution so as to free it from rapacious national pressures. Enforcement of regulations should be taken out of the hands of the flag State and placed under international control. Then international regulations would have real meaning, in the same way as State control in areas under national jurisdiction.

63. Mr. O'DONOGHUE (New Zealand) said that his country was a firm supporter of the economic zone concept and was a sponsor of working paper A/CONF.62/L.4. That paper did not attempt to cover all aspects of the practical application of the concept and there was one matter of practical significance that deserved special attention under item 8. Generally his delegation believed that the substance of the 1958 Convention on the High Seas was suitable for incorporation in the new law of the sea; but the current international law on hot pursuit, as embodied in article 23 of that Convention, would need amendment to take account of the enlarged jurisdiction that coastal States would acquire as a result of the adoption of the economic zone concept. Under the 1958 Convention, where a foreign ship violated applicable laws and regulations of a coastal State in its internal waters, territorial sea or contiguous zone, the coastal State had the right to engage in hot pursuit into the high seas for purposes of arrest. That provision should now be extended to reflect a coastal State's new jurisdiction within an economic zone of 200 miles. Moreover, if a definite zone of jurisdiction of that extent was accorded to the coastal State, that State should have the power to enforce its relevant laws and regulations applying within that zone. To that end, it was logical, and a practical necessity, that the right of hot pursuit should be afforded from within the 200-mile limit into the high seas, or into an adjacent economic zone, against vessels committing violations of the rights for whose protection the 200-mile limit was established. Various rights should be protected within that limit, depending on whether such rights related to sovereignty over the territorial sea, to the contiguous zone, or to the protection, in the economic zone as a whole, of resources and the marine environment that supported those resources.

64. Regarding the practical termination of the right of hot pursuit, he did not envisage that foreign vessels should be able to obtain sanctuary from pursuit by entering the economic zone of their own or a third State. Sanctuary should remain in accordance with the wording of the 1958 Convention, i.e. hot

pursuit would cease as soon as the ship pursued entered the territorial sea of its own country or of a third State.

65. He would welcome comments by other delegations on the question, since the power of hot pursuit was important for adequate control of economic zones. Consideration should also be given to drafting relevant articles and to bringing up to date the 1958 provisions concerning arrest by aircraft in the light of modern technological developments.

66. Mr. POLLARD (Guyana), speaking on a point of procedure, said that his delegation held the view that the competence of the International Sea-Bed Authority to be established in the international area should not be limited exclusively to the seabed but should also include the water column and the resources therein. He suggested that thought should be given to the adoption of a formal procedure whereby the future régime in the international area could be considered in the joint meetings of the First and Second Committees.

67. The CHAIRMAN said that a trend had emerged in the discussions in favour of making the powers of the proposed Authority applicable to both the sea-bed and the superjacent waters. He invited the Committee to consider how the issue could best be studied and the possibility of holding a joint meeting with the First Committee at an appropriate time.

68. Mr. ANDERSON (United Kingdom) said that the high seas, and even those parts beyond the proposed extended zones of national jurisdiction, would still constitute the largest area of sea in the world. The existing régime, set out in the Convention on the High Seas and based on freedom of the seas, had served the international community well, though certain criticisms of that régime had been voiced at the Conference. It was necessary to consider the impact on that régime of the changes in national jurisdiction which might emerge as a result of the Conference. It was also necessary to bear in mind that freedom of the seas had never been absolute; it had always been subject to qualifications. Such qualifications should be clearly defined in the proposed convention.

69. His delegation, which attached particular importance to freedom of navigation and overflight, would shortly submit proposals on that item of the agenda. One of the short-comings of the Convention on the High Seas was that the obligations of flag States were not clearly defined. Flag States, which claimed certain privileges in regard to ships flying their respective flags, also had certain duties vis-à-vis the international community. Each flag State should exercise its jurisdiction and control effectively in administrative, technical and social matters over ships flying its flag. A future convention should contain provisions with regard to ships found trafficking in narcotics and should strengthen existing regulations concerning pirate broadcasting. While his delegation favoured the retention of as much as possible of the existing freedom of the high seas in the area beyond the territorial sea, it considered that the obligations on flag States should be clarified in order to prevent abuses.

70. Mr. Cisse (Senegal) endorsed the views expressed by the representative of the United Republic of Tanzania with regard to the fisheries commissions. In many cases the measures they adopted were not adequate. They should genuinely represent the interests of the international community with regard to the protection of the resources in the high seas by means of efficient inspection, and they should take particular account of the interests of developing countries.

71. Mr. MOVCHAN (Union of Soviet Socialist Republics) said that he understood the high seas to refer to that part of the oceans beyond the limits of the territorial sea, which all States could use freely and in which no State was entitled to exercise sovereignty. The basis of the régime of the high seas was the generally recognized principle of the freedom of the high seas, as codified in the 1958 Geneva Convention on the High Seas. He stressed that the Convention had been adopted unani-

mously at a Conference in which representatives of all continents of the world had participated. His delegation regarded that Convention as a major contribution to the international law of the sea and believed that the basic principles and norms it embodied should be retained.

72. The principle of the freedom of the high seas had been a major factor in the development of the world economy and international communications. That freedom had been recognized after a long struggle between the forces of progress and the forces of reaction, and it not only helped to meet the economic needs of mankind and to promote scientific and technological progress, but had become one of the means of implementing the principle of peaceful coexistence between States, including international co-operation and fraternal international assistance to peoples struggling against colonialism and imperialism for peace and democracy.

73. The freedom of the high seas included freedom of navigation, freedom of overflight, freedom of scientific research, freedom of fishing, freedom to lay submarine cables and pipelines and other freedoms embodied in the principles of international law and the Charter of the United Nations. Due account should be taken, in exercising those freedoms, of the interests of other States. He agreed that new measures providing for the conservation of living resources were now needed.

74. With regard to the question of international fisheries commissions, he said that any criticism of those commissions, which deserved respect, should be supported by facts and figures and preceded by a careful and objective assessment of their work. The freedom of scientific research and the freedom of fishing should be exercised in the context of the special provisions to be worked out by the Conference on the régime of the economic zone. He understood the economic zone to refer to that part of the high seas in which the coastal State enjoyed clearly defined special economic rights over the living and mineral resources. Proposals had been made by certain representatives that would divide the oceans into two parts, one part under national jurisdiction and the other under international jurisdiction; that approach was a dangerous distortion of the concept of the economic zone. His delegation had accepted the principle of the economic zone and would be willing to contribute to the establishment of economic zones, taking into account the interests of coastal States. The issue of the economic zone should be resolved as part of a package deal, and provision should be made only for the rights of coastal States over the resources of the zone.

75. His delegation was in favour of a firm régime of the high seas which would prevent any interference with the freedom of the high seas. Some critics of the existing régime had tried to claim that gross violations of the law of the sea by certain States were in fact applications of the current régime of the high seas. He therefore felt it would be advisable to spell out some of the existing international legal norms in order to ensure that the new law of the sea to be established would be acceptable to all delegations. The norms contained in the Geneva Convention on the High Seas should be reflected in the working documents of the Committee, since they reflected the views of many countries. They could, however, be supplemented by special provisions concerning the international legal obligations and responsibilities of flag States.

76. Mr. ARIAS SCHREIBER (Peru) said that in the international zone, States should respect the rights of the international community in the same way as they respected the rights of the coastal States in the 200-mile zone of national jurisdiction. The high seas were not a *res nullius* but a *res communis* and the proposed régime should contain adequate provisions governing those areas. In the proposals submitted by the delegations of Peru, Ecuador and Panama to the sea-bed Committee in 1973 (*ibid.*, sect. 16) the international seas were defined as that part of the sea which was not subject to the sovereignty and jurisdiction of coastal States and which should be open to

use by all States, whether coastal or land-locked, for peaceful purposes. The proposals contained provisions concerning the freedoms to be exercised on the international seas (article 19), the scientific research régime (article 10), and the régime governing installations (articles 11 and 12). Regulations should be formulated to ensure proper international control over fisheries in order to preserve the renewable resources in the international sea. Coastal States had a special interest in maintaining the production of renewable resources in the international sea contiguous to their zone of national jurisdiction. A future régime should contain adequate provisions for the control and elimination of pollution, which endangered the ecological balance in the oceans. The concept of the high seas should be replaced by the concept of international seas. His delegation would provide further details on that point at the proposed joint meeting of the First and Second Committees to consider the competence of the International Sea-Bed Authority with regard to the sea-bed and the water column in the international zone.

77. Mr. WARIOBA (United Republic of Tanzania), speaking in exercise of the right of reply, said that the representative of the Soviet Union had made remarks which were clearly directed at his delegation's criticism of international fisheries commissions. The representative of the Soviet Union had stated that criticism of international organizations should be supported by adequate data. The Tanzanian delegation maintained that such data existed in the form of scientific reports, the Conventions establishing those commissions, and experience gained in areas where they had worked. In the past, his country had praised the fisheries commissions and had recommended them to other States; it would not have done so without proper data. It followed that that data was also valid when those commissions were being criticized. In his statement, he had emphasized the importance of enforcement. It was common knowledge that inspectors were not allowed on board vessels while they were fishing, that they could not go below deck and that they could not inspect gear; his criticism of the commissions had been based, *inter alia*, on those short-

comings. If there was a lack of data concerning the existing regional fisheries commissions, recommendations should not have been made to establish international commissions on the same basis.

78. Mr. OGISO (Japan), speaking in exercise of the right of reply, said that the representative of the United Republic of Tanzania had referred to a statement by two United States Senators which had appeared in the press implying that salmon of Bristol Bay origin would be depleted as a result of the fishing practices of Japanese fleets. He wished to clarify that statement as it was misleading in some respects and could lead to misunderstanding.

79. Japanese fishing fleets only fished up to the line of 175° longitude west in the middle of the Pacific Ocean. Most salmon from the Bristol river did not cross that line. At the beginning of the year, scientists had expressed concern that the return of salmon of Bristol origin might be reduced due to severe winter conditions in the past years, to 5 million fish, which was less than the amount required for reproduction. However, that estimate had been found to be incorrect. Recent surveys had shown that the return was over 10 million, which was entirely sufficient for reproduction purposes. Reports that Bristol-origin salmon had been depleted as a result of Japanese fishing practices were therefore incorrect.

80. The representative of the United Republic of Tanzania had also referred to Japanese halibut fisheries in that area. The Japanese fishing industry did not fish in areas where halibut were concentrated. Any halibut caught inadvertently was immediately returned to the seas.

81. Mr. WARIOBA (United Republic of Tanzania), speaking in exercise of the right of reply, said that he wished to make it clear that he had not referred to statements in the press concerning the area mentioned by the representative of Japan; he had said that he shared the same concern as Senators Muskie and Stevens.

The meeting rose at 6.15 p.m.

32nd meeting

Thursday, 8 August 1974, at 10.45 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Land-locked countries

[Agenda item 9]

Rights and interests of shelf-locked States and States with narrow shelves or short coastlines

[Agenda item 10]

1. Mr. UPADHYAYA (Nepal), introducing the explanatory paper on the draft articles relating to land-locked States contained in document A/CONF.62/C.2/L.29, said that the sponsors had tried to highlight the main issues that were vital for safeguarding the rights and interests of the land-locked countries. High priority should be given to the right of free access by land-locked countries to and from the sea as a firmly established and legally binding principle. That principle had been recognized in various international conventions and it should now be reaffirmed and elaborated in the new instrument on the law of the sea with due regard to present realities.

2. For years, even before the first United Nations Conference on the Law of the Sea, the land-locked countries had been making vigorous efforts to draw the attention of the entire international community to their problems and to the need for

ensuring their rights in any future codification. To a remarkable extent, their efforts had been supported by the United Nations and other international agencies, in particular the three sessions of the United Nations Conference on Trade and Development (UNCTAD), and their right of free access to and from the sea should now be clearly elaborated in order to enable them to promote their international trade and their economic and industrial development. The land-locked countries depended on the port facilities provided by the transit countries and should now be given the right to establish certain installations under their own authority and control in those ports. Furthermore, adequate guarantees should be provided to ensure that the process of transit was less cumbersome and hazardous. The land-locked countries therefore considered the seven-Power draft articles submitted to the last meeting of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (A/9021 and Corr.1 and 3, vol. II, p. 16) in Geneva to be of supreme importance. They provided sufficient safeguards of the legitimate rights and interests of the transit States and clearly indicated that the land-locked countries were sincere in offering those safeguards. The land-locked countries therefore hoped that the seven-Power draft articles, the explanatory paper in document

A/CONF.62/C.2/L.29, and the Kampala Declaration of 1974 (A/CONF.62/23) would provide the basis for further negotiations in the Committee.

3. Mr. PISK (Czechoslovakia) said that legal norms concerning the rights and interests of the land-locked and other geographically disadvantaged States should become a part of the new codification of the international law of the sea. Those norms should in particular ensure free access by land-locked countries to and from the sea, their freedom of transit for that purpose, equality of treatment in the ports of transit States, free access to the international sea-bed area and participation in the international régime, including the machinery, and the equitable sharing in the benefits derived therefrom.

4. The right of land-locked States to free access to and from the sea must be considered as a firmly established and legally binding principle, to be reaffirmed, elaborated and surrounded by legal guarantees which would ensure its implementation in the new convention. His delegation earnestly hoped that the seven-Power draft articles relating to land-locked States would be reflected in the new codification that would emerge from the Conference. His delegation also wished to express its endorsement of the principles contained in the Kampala Declaration, which was based on similar ideas.

5. Document A/CONF.62/C.2/L.29 was an attempt to explain in greater detail the principles and norms which the land-locked countries wished to see embodied in the new convention on the law of the sea. The first part of the paper sought to explain why the previous legal instrument dealing with the right of access of land-locked States to the sea could not be considered satisfactory. That applied particularly to the 1958 Geneva Convention on the High Seas¹ which, while proclaiming the principle of free access to the sea and recognizing that States having no sea-coast had equal rights with coastal States, had not included adequate measures to ensure their effective exercise. The second part of the paper explained individual principles and provisions which were included in the draft articles. Two principles included in the draft articles should be regarded as fundamental: first, the land-locked States, irrespective of the origin and characteristics of their land-locked condition, should have the right of free access to and from the sea in order to enjoy the freedom of the seas and to participate in the exploration and exploitation of the sea-bed and its resources on equal terms with coastal States; and secondly, in order to ensure the exercise of the right of free access to and from the sea, transit States must accord free and unrestricted transit to the traffic of land-locked States by all means of transport and communication in accordance with the provisions of the convention. The authors had attempted to reflect adequately existing practice and experience as developed in different parts of the world and to derive therefrom a common denominator that might be shared by all land-locked States and recognized by the entire international community. The draft articles did not include a detailed regulation, but followed the pattern of other principles to be included in the new codification. The land-locked countries were aware that many aspects of the provisions of the draft articles had to be implemented in special bilateral, regional or multilateral agreements with transit States. They also recognized that the exercise of their rights should in no way entail a threat to the sovereignty or other important interests of the transit States. The draft articles therefore included a number of clauses safeguarding the rights of transit States.

6. Previous legal instruments, such as the 1958 Geneva Convention on the High Seas and the 1965 New York Convention on Transit Trade of Land-locked States,² had secured freedom of transit for land-locked States "on a basis of reciprocity". Those provisions had apparently been based on a wrong sup-

position that both the land-locked and transit States had identical needs for transit arising from the same or comparable position. That was not the case. The purpose of free transit for land-locked States was to ensure the exercise of their right of access to and from the sea. Failing that, they would be deprived of the benefits deriving from the legal uses of the sea on an equal basis with coastal States. The draft articles therefore included a principle whereby reciprocity should not be a condition of free transit for land-locked States. The land-locked countries were, however, aware that in some cases the level of economic and other relations between a land-locked State and its transit neighbours might lead to agreements that would include the principle of reciprocity. The sponsors of the draft articles wished to avoid the adverse effects of both a strict application of the condition of reciprocity on the one hand, and its mandatory exclusion on the other.

7. Mr. KAFANDO (Upper Volta) said that his delegation was guided by the principle that the sea was a factor in the development of peoples, an element of solidarity between nations and a zone of peace and security. The three priorities with respect to the land-locked countries' rights were the right of access to the sea, the right of transit and the right of participation by developing land-locked countries in the exploration and exploitation of the resources of the exclusive economic zone.

8. Today the right of free access to the sea existed, to a certain extent, in bilateral agreements and in some multilateral instruments. However, the land-locked countries wished to see the timid provision of article 3 of the 1958 Convention on the High Seas strengthened and unequivocally stated in the new legal instrument. To that end, his delegation believed that the seven-Power draft articles on land-locked States (A/9021 and Corr.1 and 3, vol. 11, p. 16) should be given particular attention by the Conference. The rights contained therein, namely, the right of free access to and from the sea without restriction and the right of free access to the sea-bed area, derived their justification from legal philosophy and from the very nature of the ocean space. The sea should not be the sole property of coastal States, but should be used by all States.

9. The old legal order governing the use of the oceans which had been based on political concerns and the desire for hegemony by the great maritime Powers had undergone a radical change. The *res communis* which was now the basis for that law was primarily economic considerations. A new concept of equality of rights had been introduced, placing all States, coastal or non-coastal, on an equal footing. However, that *de jure* equality had to be made *de facto* since the coastal States currently enjoyed certain priorities.

10. He recalled that the United Nations General Assembly, at its eleventh session, by resolution 1028 (XI), had drawn the attention of the international community to the necessity of providing adequate transit facilities for the land-locked countries in order to promote their international trade, thus implicitly imposing an obligation on transit States. That obligation was all the more important as the economic needs of the land-locked and coastal States were interdependent.

11. The fact remained, however, that the land-locked countries were far more deprived than their coastal neighbours, as reflected in their classification by UNCTAD among the least developed countries. The Conference should therefore find a definitive solution in order to ease the economic plight of the land-locked countries resulting from heavy transport costs, lack of industry and high cost of imports, all of which reduced their foreign exchange earnings. It was for that reason that the land-locked countries were attempting to ensure that transit traffic should not be subjected to any customs duties or taxes other than for services rendered. If free transit was recognized as a right, then the principle of reciprocity did not exist.

12. The land-locked countries should have the right to participate in the exploration and exploitation of the resources of

¹ United Nations, *Treaty Series*, vol. 450, p. 82.

² *Ibid.*, vol. 597, p. 41.

the exclusive economic zone. As the representative of Senegal had pointed out at the 25th meeting, that was one of the basic tenets of the West African Economic Community. While his country maintained excellent bilateral co-operation with Ghana and the Ivory Coast, the experience of regional integration showed that political considerations did enter into the picture. The rights of the land-locked countries, in order to be safeguarded, should therefore be laid down in a multilateral convention. Bilateral and regional arrangements should exist, but only in order to regulate the modalities and details of transit in the context of the laws of the coastal States. That was a flexible formula that would permit a reconciliation between respect for the sovereignty of the coastal States and the rights of the land-locked countries. He urged the States represented at the Conference to transcend national self-interest and negotiate a new, enlightened law of the sea by accepting compromise solutions.

13. Mr. MYRSTEN (Sweden) said that article 2 of document A/CONF.62/C.2/L.39, of which Sweden was a sponsor, granted a right to all geographically disadvantaged States, whether developing or developed, to participate in the exploitation of the living resources in the zones of neighbouring coastal States, while other proposals restricted that right to developing countries. When the economic zone concept had begun to emerge, his delegation had wondered whether the right to establish such zones should not rightly be confined to those countries which really needed them, in the first instance, the developing countries. It had been said, however, that practical considerations had convinced the originators of the economic zone concept that differences in the breadth of the jurisdiction area, for example, between neighbouring coastal States, should be avoided. It had also been pointed out that difficulties would arise if a developing coastal State should, in the future, reach a status that could be classified as developed. It now appeared that a majority of States had accepted the view that there would be no differentiation between developing and developed countries with respect to the breadth of the economic zone. It would then logically follow that no distinction should be made between developing and developed States which were geographically disadvantaged.

14. His delegation believed that since the land-locked or shelf-locked developed countries had only developed countries as neighbours, the different treatment of the rights of neighbouring disadvantaged countries would result in giving the developed coastal States more exclusive fishing rights in their economic zones. The developing coastal States, on the other hand, undertook to share the living resources of their economic zones with their geographically disadvantaged neighbours. His delegation had difficulty in understanding why highly developed coastal States should be entitled to reserve for themselves large parts of the living resources of the sea. It was even more difficult to conceive why developed coastal States should be accorded more extensive rights in their zones than developing coastal States. It therefore seemed to his delegation that no developing country would stand to lose by admitting rights for developed geographically disadvantaged countries within the zones of the neighbours of the latter.

15. The philosophy behind the provisions of article 3 was that the economic zone was a new concept in international law replacing the concept of the legal continental shelf. The proposal was aimed at striking a balance between the interests of coastal States on the one hand, and those of the geographically disadvantaged nations on the other. Much of the criticism of such a proposal had been based on the argument of acquired rights. The Conference was, however, entitled and expected to create new rules and was under no obligation to retain old concepts. It should be borne in mind that the same argument of acquired rights was applicable to those parts of the high seas which, according to the economic zone concept, would fall under the resource jurisdiction of coastal States. The right of

all nations to fish on the high seas had been acknowledged for centuries, while the right to the resources of the continental shelf was of very recent date. Consistency demanded that the Conference could not do away with acquired rights in one context while retaining them in another.

16. There were no definitions of the concept of "other geographically disadvantaged States" and "neighbouring coastal States". The comparison between a "disadvantaged" State and its "advantaged" neighbour would determine the extent of the right to be enjoyed by the disadvantaged neighbour. That determination should be solved at the regional, subregional or bilateral level. The same applied to the term "neighbouring coastal States" and, in that connexion, his delegation was pleased to see the emphasis placed on regional fishery organizations in document A/CONF.62/C.2/L.40.

17. With respect to anadromous fish originating from geographically disadvantaged States, much had been said about salmon migrating from their home rivers to the high seas, where they could be fished indiscriminately by fishermen from other States. However, nothing had been said about those salmon returning from the high seas to their home rivers in geographically disadvantaged States. As the Swedish extensive tagging research clearly showed, a significant part of the recaptures were made in the territorial waters of other States. If the convention was to include a coastal State exclusive economic zone, due consideration must be given to the interests of the salmon-producing but geographically disadvantaged States so that arrangements could be made between the coastal States and the States of origin of anadromous fish in order to maintain an optimum suitable yield for the interested countries. Those regulations could be made either by bilateral or regional arrangements.

18. Mr. KUMI (Ghana) said that the problems of special interest groups involved rather delicate issues; the need for tact and care in assessing and evaluating them had been underscored on several occasions. The Conference should not threaten the unity of cohesive groups or see them dismembered. Any solution to the problems involved must accommodate conflicting interests.

19. There were two elements involved: the incontestable right of all States to the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction as the common heritage of mankind, and agreement on appropriate measures to ensure that geographically disadvantaged countries had access to resources under the sovereign jurisdiction of coastal States. It was the second element that had led to controversy and disagreement.

20. It would be virtually impossible for the Conference to try to spell out the details of regional or bilateral agreements conferring the right of transit through coastal States to the sea, but the convention should contain provisions that would make the conclusion of such agreements mandatory. There was no doubt that regional integration was fast becoming a fact of life: paragraph 9 in part C of the Declaration of the Organization of African Unity on the issues of the law of the sea (A/CONF.62/33) adequately reflected a spirit of accommodation and the trend towards integration.

21. His delegation sympathized with and shared the concerns of those who wished to see regional or subregional economic zones established as a solution to the problems of the land-locked and other geographically disadvantaged countries. There was considerable merit in the idea of establishing regional fishery zones, and to do so would be a welcome move towards regional economic integration. But the issue should be taken up by the appropriate continental or regional organizations. Even if the concept of a regional economic zone was accepted, there would still remain the crucial issue of the access of land-locked and other geographically disadvantaged countries to the zone. Such access should not compromise the secu-

city of coastal States, and it must reflect the underlying principle of bilateral or multilateral agreements.

22. His delegation supported the legitimate demands of land-locked States for access to and the right to benefit from the living resources of the economic zone of neighbouring countries. The Declaration of the Organization of African Unity had endorsed that provision as a right and not merely as a principle. It followed that his delegation could not fully support all the articles submitted in document A/CONF.62/C.2/L.39, but it could accept the articles referring to the sharing of the living resources in the economic zone. His delegation interpreted the word "neighbouring" in terms of adjacency.

23. Mr. OCHAN (Uganda) said that a land-locked State's most evident disadvantage was the absence of a seaport—a facility that had a fundamental effect on the economy of any State. The sea offered the cheapest mode of transport and was often the only way to reach international markets. Because they had no sea-coasts, the access of land-locked States to the main avenues of international transport was indirect; the consequent high transport costs were a serious impediment to foreign trade and the economic development of most of those States. Legal, administrative and political problems often arose also. From the earliest times, land-locked territories had frequently had to face restrictions of various kinds on the movement of goods and persons between them and the seas through more advantageously placed territories. With the growth of trade, it had become necessary to find a balance between strict adherence to the sovereignty of coastal States and the land-locked States' need for international trade.

24. He reviewed the history of the progressive development of international law relating to land-locked and other geographically disadvantaged States as embodied in the Covenant of the League of Nations, the 1921 Barcelona Convention and Statute on Freedom of Transit,³ the 1947 General Agreement on Tariffs and Trade (GATT), and the 1965 New York Convention on Transit Trade of Land-locked States. The review showed that the rights of land-locked and other geographically disadvantaged States were firmly established in international law and practice. The Conference must simply review that law, make the necessary amendments to it, and bring it into line with the reality of the contemporary world—a reality that took into account the legitimate wants, aspirations and claims of land-locked and other geographically disadvantaged States. It was in that spirit that he recommended consideration of the seven-Power draft articles on land-locked States submitted to the sea-bed Committee (A/9021 and Corr.1 and 3, vol. II, p. 16) as a basis for negotiations. The document embodied the important provisions of GATT and the New York Convention; in order to ensure that the issue of transit was resolved at the same time as other law of the sea matters it provided that the proposed draft articles should form an inseparable part of the law of the sea. Draft article II, paragraph 3, under which the access to the sea of the land-locked States would be the concern of the international community as a whole, was of great importance because the time had come when the fate of a large section of the world community must be safeguarded by that community. Although the international community should provide the over-all framework, there must be express clauses in any future codification of the law of the sea making it mandatory for States to enter into bilateral arrangements.

25. Document A/CONF.62/C.2/L.29 contained a fairly thorough analysis and discussion of his delegation's position on the item. He urged the Committee to use the document and also the Kampala Declaration as a basis for discussion and negotiations. The Declaration outlined the very basic legitimate aspirations of the land-locked and other geographically disadvantaged States. He also drew the Committee's attention

to document A/CONF.62/C.2/L.39, of which his delegation was a sponsor. That document was another attempt to accommodate the interests of land-locked and other geographically disadvantaged States without disregarding the interests of other States.

26. Mr. TUERK (Austria) said that the right of the land-locked States to free access to the sea had long since become a well-established principle of international law. Article 3 of the 1958 Geneva Convention on the High Seas made the exercise of that right dependent on agreements between the States concerned. His country had satisfactorily concluded bilateral agreements with its neighbouring States, but it fully understood the situation of land-locked countries that had not found such a satisfactory solution. The explanatory paper in document A/CONF.62/C.2/L.29 contained an excellent analysis of the various problems of the land-locked countries.

27. The time had come to accommodate the legitimate interests of the land-locked and other geographically disadvantaged States and to harmonize them with those of other groups of States. Document A/CONF.62/C.2/L.39 stated the position of the land-locked and other geographically disadvantaged States on their participation in the exploration and exploitation of the living and non-living resources in the area beyond the territorial sea. As far as the rights of land-locked and other geographically disadvantaged States to those resources were concerned, no basic distinction should be made as to the nature of those resources. The countries involved were not asking for privileges, but for equality and non-discrimination—a status they believed they were entitled to as a matter of right.

28. The principle of the common heritage of mankind provided a firm basis for the participation of land-locked States in the exploitation of the resources of the area beyond the limits of national jurisdiction. It also implied their access to the area. There must be effective provision for a land-locked country or its enterprises to participate in the exploitation of the resources of the international area; in considering competing proposals for such exploitation, the unfavourable geographical location and resulting distortion of the competitive position of the land-locked States would have to be taken into account. In that way, the land-locked and other geographically disadvantaged States should be at least partly enabled to offset their obvious disadvantages, which were a direct consequence of their particular geographical position. The transfer of technology was therefore of the utmost importance; in most cases that was a prerequisite for a land-locked State to be able to participate actively in the exploitation of the international area. Even relatively highly industrialized States like his own lacked sufficient marine science and technological know-how.

29. The land-locked countries must be adequately represented in the various organs of the future International Sea-Bed Authority. Their representation in the council of the Authority should be roughly proportional to their number in the assembly. Because many land-locked countries were among the least developed in the world, it was of very great importance to them that the Authority should begin to function in the very near future. In distributing the benefits derived from its activity, the Authority should consider the stage of economic development of the recipient country, using the *per capita* gross national product as a primary indicator in determining the equitable share of benefits to be allotted to each of the countries concerned.

30. Lastly, the new law of the sea must provide the possibility for land-locked States to participate in marine scientific research.

31. Mr. NYAMDO (Mongolia) said that his country, as a land-locked country, attached the greatest importance to item 9, on which it had already explained its general position.

32. The right of land-locked countries to free access to and from the sea had been endorsed by all participants in the Con-

³ League of Nations, *Treaty Series*, vol. VII, p. 11.

ference as a firmly established and legally binding principle of existing international law. Consequently, the main task of the Conference as far as the land-locked countries were concerned was to work out legal norms further elaborating their rights and interests.

33. His delegation was a sponsor of document A/CONF.62/C.2/L.29, the purpose of which was to explain in some detail the provisions of draft articles relating to land-locked States submitted to the sea-bed Committee on 2 August 1973 (*ibid*). He emphasized the importance of articles II and III of the draft articles and expressed his delegation's full agreement with the explanations concerning those two articles in document A/CONF.62/C.2/L.29. Article XVII stipulated that land-locked States should have the right of free access to and from the area of the sea-bed and should derive benefits from its resources—a provision which was in full conformity with the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (General Assembly resolution 2749 (XXV)). Article XVIII provided that land-locked countries should have proportionate representation in the organs of the future international sea-bed machinery, particularly in its council, and article XIX that they should also have equal rights in the matter of decision-making.

34. The draft articles also adequately protected the legitimate rights and interests of the transit State. Under article XIV, the transit State could take any measures it deemed necessary to ensure that the exercise of the right of free and unrestricted transit should in no way infringe its legitimate interests.

35. The provisions contained in the draft articles dealt in a general way with the problems of land-locked countries and would certainly not exclude the conclusion of bilateral, regional or multilateral agreements providing for special arrangements. Indeed, the draft itself called for the settlement of specific questions by the land-locked and transit States concerned.

36. The new convention on the law of the sea, if it was to be comprehensive, must develop existing general principles on the rights of land-locked countries. The Conference should facilitate that task by firmly endorsing and elaborating the principle of the right of free access of land-locked countries to and from the sea. His delegation also hoped that the international community would give due consideration to the rights and interests of land-locked countries in the economic zone.

37. Mr. DIATTA (Senegal) said that his delegation attached the greatest importance to item 9.2, on the rights and interests of land-locked countries, and he stressed the difficulties experienced by those countries—the majority of which were situated on the African continent—in the struggle for development.

38. His delegation supported without any reservations the Declaration of the Heads of State and Government of the Organization of African Unity signed at Addis Ababa in May 1973 and at Mogadiscio in June 1974. A provision had been inserted in that Declaration to reflect the views of the land-locked countries concerning their right of access to the sea. Thus, the African States recognized: that the land-locked countries should be entitled to access to the sea and that a provision to that effect should be included in the universal convention to be elaborated by the Conference; and that the land-locked countries should have the right to exploit the living resources of neighbouring economic zones on an equal footing with the nationals of coastal States.

39. Those rights had also been affirmed by the General Assembly at its twenty-fifth session in resolution 2749 (XXV) and at its sixth special session in resolution 3202 (S-VI).

40. The economic and political importance of such rights was self-evident. Their main effect would be to narrow the ever-widening gap between developed and developing countries, thereby reducing the international tensions generated by feel-

ings of disappointment on the part of nations which felt that they had been wronged.

41. The African countries were aware of the problems and had to some extent anticipated the law by giving land-locked countries access to port facilities. That reflected their eagerness for co-operation at the bilateral, subregional and regional levels. Thus the member countries of the West African Economic Community, three of which were land-locked countries, were striving to establish satisfactory arrangements for the joint exploitation of fishery resources.

42. Mr. RABAZA (Cuba) said that his delegation endorsed the right of the land-locked countries to free access to and from the sea because it was a basic principle of the law governing the freedom of the high seas. It believed, too, that the land-locked and geographically disadvantaged States should have the right to participate in the exploitation of the living resources in the economic zones of neighbouring coastal States.

43. He recalled the words of the President of Mexico, who at the 45th plenary meeting had expressed Mexico's concern about the situation of certain Caribbean States, whose problems would not be solved by the establishment of a patrimonial sea. The President had spoken of the need to take into account the just aspirations of those States and to make provision in the convention for regional or subregional agreements which would guarantee their nationals the right to exploit the living resources of the region. Mexico, he had said, was ready to start negotiations whenever the States concerned so desired.

44. Cuba which, by virtue of its geographical situation, had been the gateway to the new world in the centuries following its discovery, was today a geographically disadvantaged country. It therefore attached importance to the draft submitted by the Jamaican delegation concerning the rights of the geographically disadvantaged countries (A/CONF.62/C.2/L.35) and endorsed the provisions it contained.

45. Mr. ANDRES (Switzerland) observed that the existing law of the sea made provision for some of the rights of the land-locked countries. Some multilateral conventions adopted prior to the Geneva Conventions of 1958 had granted land-locked countries a number of basic rights, including: their right to sail under their own flags on the high seas; equality of treatment in seaports with regard to access to and the use of such ports; and free transit through the territory of States situated between them and the sea. The first of those rights had been confirmed in article 4 of the Geneva Convention on the High Seas and the second and third had been recognized, in principle, in article 3 of the same Convention. It was nevertheless essential that the articles of the convention prepared by the Third Conference should confirm all those rights clearly and reaffirm unambiguously the right of innocent passage to which the vessels of land-locked and coastal States were equally entitled, in accordance with article 14 of the Geneva Convention on the Territorial Sea and the Contiguous Zone.⁴ The fact that some land-locked States might not actually possess a maritime fleet was irrelevant; the point was to confirm existing rights for every State without exception. Moreover, States that did not have ocean-going vessels currently might well acquire them in the future.

46. The land-locked States should continue to enjoy the freedoms referred to in article 2 of the Geneva Convention on the High Seas, in particular the freedoms of navigation and overflight, and should also be free to conduct scientific research. In principle, those freedoms should also be enjoyed in the proposed economic zone. The land-locked States were particularly concerned to see the principle of freedom to conduct scientific research preserved to the fullest possible extent.

47. The rights referred to had evolved within the context of international rules which were based on a simple division of

⁴United Nations, *Treaty Series*, vol. 516, p. 206.

maritime space, namely, a relatively narrow territorial sea under the sovereignty of the coastal States and the high seas which were open to all States, coastal and land-locked alike. The new element which had upset that simple division was the formulation of a number of unilateral claims concerning the coastal State's exclusive right to the resources of its continental shelf. That extension of jurisdiction—the external limit of which had been left unfortunately vague in the 1958 Geneva Convention—had upset the balance between coastal and land-locked States.

48. It went without saying that the institution of a broad zone in which the coastal State would have rights over all the resources would further aggravate that inequitable situation. That was why his delegation had decided to sponsor document A/CONF.62/C.2/L.39. Prevented by their geographic situation from benefiting from the resources of the continental shelf currently and from those of the economic zone in the future, the land-locked States would at the same time see the high seas, which had been open to them just as to the coastal States, considerably narrowed. Those circumstances provided the legal basis for the demand of the land-locked States to participate in the exploitation of the resources of the economic zone or, failing that, to receive adequate compensation. It must be remembered that the land-locked countries were all small States, of which most were developing or poor in natural resources and some were among the most disadvantaged. On the other hand, the majority of the States that would benefit from the creation of the economic zone were not poor.

49. There was nothing in law or in equity to justify a distinction between living and non-living resources. Furthermore, the advocates of the economic zone concept did not draw any such distinction in respect of the resources of the zone. Consequently any attempt to exclude the land-locked countries from the exploitation of either category of resources or the resultant benefits would be misguided, particularly where regional agreements implying special bonds or solidarity between the signatory States had been concluded.

50. Many land-locked and geographically disadvantaged countries were sorely lacking in mineral resources; Switzerland, for example, had none at all. Their interest in living resources to feed their population was self-evident.

51. Some delegations maintained that the resources of the economic zone—and they were referring exclusively to the living resources—should benefit only the developing land-locked or geographically disadvantaged States. His delegation had already pointed out that such a discriminatory attitude was completely unjustifiable. At the 28th meeting, the representative of Austria had rightly stated, moreover, that the sponsors of certain proposals drew no distinction between developed and developing coastal States when advocating the creation of an exclusive economic zone and that they were therefore unjustified in making a distinction when it came to the interests of the land-locked or geographically disadvantaged States within that zone. There seemed to be confusion between the concept of the economic zone and that of the international sea-bed area; the fact was that the two zones would serve completely different purposes. The proposed economic zone was designed to protect the national economic interests of all coastal States without distinction. The inequalities that would result from its creation as far as the land-locked and geographically disadvantaged countries were concerned should be offset by granting such countries the right to benefit directly or indirectly from the resources of the economic zones of the region. The international sea-bed area, on the other hand, would belong to and should benefit everyone, particularly the developing countries. Thus a distinction was drawn between developed and developing States with regard to that area, whereas in the case of the economic zone it was not.

52. The régime for the international sea-bed area should explicitly grant to the land-locked countries the right of free

access to and from the area and the right to preferential benefits from the resources of the area. Furthermore, the land-locked countries should be represented in the small body of the Authority which would be responsible for administering those resources. Measures along those lines were not a charitable gesture but a meaningful application of the common heritage of mankind principle.

53. Mr. HARASZTI (Hungary) said that his delegation was a sponsor of the seven-Power draft articles on the land-locked countries submitted to the sea-bed Committee (A/9021 and Corr.1 and 3, vol. II, p. 16) and of the explanatory paper in document A/CONF.62/C.2/L.29.

54. As a land-locked country, Hungary attached great importance to the recognition in the future convention of the rights of the land-locked States to free access to the sea, freedom of navigation, and equitable sharing in the benefits of the oceans.

55. The 1958 Geneva Convention on the High Seas included provisions on the right of land-locked States to free transit through the territory of States situated between them and the sea and reaffirmed the right of their ships to receive treatment equal to that accorded to the ships of coastal States. Those provisions, which had proved inadequate, had been supplemented by the 1965 New York Convention on Transit Trade of Land-locked States, which contained more detailed provisions relating to the right of free access to the sea. However, only a relatively small number of States had become parties to the New York Convention and the scope of its application had been too narrow to be satisfactory.

56. His delegation therefore attached great importance to the inclusion in the new convention of detailed provisions on the rights of land-locked States and fervently hoped that they would be based on the seven-Power draft articles on land-locked countries. In particular, it was expecting the forthcoming convention to remedy certain deficiencies of the New York Convention. For example, as the representative of Czechoslovakia had pointed out earlier in the meeting, reciprocity should not be a condition for the freedom of transit of land-locked States.

57. The right of coastal States to an economic zone—which his country was prepared to recognize—entailed a major sacrifice for the land-locked States. His delegation therefore believed that the right of the latter to participate on just and reasonable terms in the exploitation of the living resources of the proposed economic zone should also be recognized in the future convention.

58. Mr. KAZEMI (Iran) said that his delegation supported the claim of the land-locked countries to the right of free access to and from the sea, which should be open to the commercial vessels of all States whether coastal or land-locked. Accordingly, his country, although not geographically speaking a transit State, had voluntarily accorded its only land-locked neighbour transit facilities to and from its ports on the strait of Hormuz on a reciprocal basis under bilateral agreements based on the principle of sovereign equality.

59. The land-locked States should have the right to participate in the exploration and exploitation of the sea-bed area beyond the limits of national jurisdiction and to be represented in the organs of the Sea-Bed Authority on an equal footing with coastal States. However, his delegation maintained its view that the coastal State held exclusive and inalienable rights over its continental shelf and that they could not be fundamentally modified. Therefore it could not agree with any proposal that would involve the sharing of revenues derived from the exploitation of the resources of the continental shelf. It would like that view, which was shared by a number of other delegations, to be reflected in the revised text of Informal Working Paper No. 3 as an alternative to provision XII of that paper.

60. His delegation wished to make some suggestions with regard to the legitimate aspirations of the land-locked countries to participate in the exploitation of the living resources in the seas adjacent to that neighbouring State. First, coastal States, whether transit or non-transit States, should, under bilateral or regional agreements, accord to the nationals of the land-locked States of their region or subregion preferential rights to fish in certain areas of their exclusive economic zones. Secondly, in view of the fact that the adoption of the 200-mile limit as the maximum breadth of the exclusive economic zone would place some oceanic States in an extremely enviable position in terms of the living resources of the sea, it seemed only right to provide that any State whose total gain in terms of actual economic zone would exceed 50 per cent, or the outer limits of whose economic zone would exceed 100 miles, should have the obligation to contribute a reasonable portion of the revenue from the exploitation of its living resources to the Sea-Bed Authority, for distribution among all land-locked countries, with special consideration given to the least developed land-locked States.

61. Iran, bordering as it did an enclosed sea, the Persian Gulf, and a semi-enclosed sea, the Gulf of Oman, could be considered a geographically disadvantaged country. Because of its geographical position, it could not fully benefit from the proposed 200-mile limit. None the less, it supported the aspirations of those coastal States which were able to exercise jurisdiction up to 200 miles. It believed, however, that a clear distinction must be drawn between the land-locked States and the geographically disadvantaged States. Since it was difficult to draw a clear-cut line between advantaged and disadvantaged States on the basis of geographical situation alone, the term "disadvantaged States" should be formulated in a legal definition which took account of economic and other factors.

62. The draft articles being prepared by certain coastal States concerning free access to and from the sea for land-locked States essentially reflected his delegation's position on the subject.

63. Mr. KORCHEVSKY (Byelorussian Soviet Socialist Republic) said that his delegation shared the feelings of the authors of document A/CONF.62/C.2/L.29 and supported their efforts to develop and improve existing international sea law, the provisions and principles of which would help to protect the specific interests of land-locked countries. It fully understood the opinion expressed in the fourth paragraph of the document and endorsed the points made in the first two sentences of the fifth paragraph.

64. His delegation was well aware of the many problems faced by land-locked countries in developing their economies. Consequently, it felt that the seven-Power draft articles on land-locked States (*ibid.*) could serve as a basis for legal provisions guaranteeing the rights and interests of the land-locked countries. A number of new points set out in document A/CONF.62/C.2/L.29 also had great merit. His delegation fully shared the feelings of the authors of the document as set out in Part E; the corresponding article in the seven-Power proposal should be amended in order not to make reciprocity a condition for the free transit of land-locked States. He was prepared to agree that many of the articles in that document could be made into a separate chapter on the problems of land-locked countries in the future convention. While he supported the retention of the general regulatory role of the new conven-

tion, he felt that a number of issues, such as those connected with transit facilities and routing for land-locked States, should be regulated by bilateral, regional or multilateral agreements. That was because it was easier to assess certain specific features of the relationships between countries at the regional or State level. One such feature was the existence of different social systems; he pointed out that in international practice there were certain limitations on the freedom of transit of individuals.

65. In tackling the problems of the land-locked countries the Conference must approach the drafting of a universal international instrument from the standpoint that all questions of ocean space were interrelated and must be considered together. It would thus be possible to take into account the interests of all States and to create the necessary conditions for opening negotiations in a spirit of compromise. The merit of the approach was demonstrated by the fact that a number of delegations had already shown readiness, on certain conditions, to adjust their positions considerably.

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

66. Mr. CHAO (Singapore) said that the fairest solution and the one which would most benefit all mankind would be to decide upon a 12-mile territorial sea, with the rest of the ocean falling under the jurisdiction and management of an International Authority. The Authority would exploit the non-living resources of the area for the benefit of all peoples and would lay down rules for the rational and equitable exploitation of the living resources by all States. An alternative solution would be the establishment of regional economic zones. His delegation had not heard any cogent reasons why its suggestions should not be adopted.

67. While his delegation maintained its views on that subject, it appreciated the desire of coastal States to have economic zones of their own. However, it would only support the establishment of an economic zone if the claims of the land-locked and other geographically disadvantaged States, as set out in document A/CONF.62/C.2/L.39, were met. The 1958 Geneva Conference—held before Singapore had attained its independence—had treated the land-locked and other geographically disadvantaged States unfairly. His delegation was therefore particularly anxious to see their rights secured in the future convention, since otherwise the land-locked and disadvantaged States would again be the losers in that coastal States would continue to exercise and affirm "acquired rights". His delegation had therefore been among the sponsors of document A/CONF.62/C.2/L.39 and was amenable to suggestions for its improvement.

68. He agreed with the representative of Iran that there was a need for a better definition of the term "disadvantaged States". Singapore had a territorial sea of no more than 4 miles and was clearly disadvantaged. His delegation looked forward to co-operating with the Iranian delegation in working out a definition.

69. Mr. KUMI (Ghana) said that he wished to make it clear that his delegation's support of the right of the land-locked States to exploit resources in the economic zone of coastal States was limited to living resources. It could not therefore support article 3 of document A/CONF.62/C.2/L.39, which referred to non-living resources.

The meeting rose at 12.55 p.m.

33rd meeting

Thursday, 8 August 1974, at 3.25 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Land-locked countries (*continued*)

[*Agenda item 9*]

1. Mr. OGUNDERE (Nigeria) said that his delegation, faithful to the principles embodied in the Declaration of the Organization of African Unity (A/CONF.62/33), acknowledged the right of land-locked and other geographically disadvantaged States to access to the exclusive economic zones of neighbouring coastal States. Nigeria had always recognized that right and voluntarily granted to the neighbouring land-locked States of Niger and Chad free transit to and from the sea without hindrance; for example, after the recent crop failures in those areas his Government had expedited transportation of all materials needed by those States. He therefore supported the codification of the right of transit in the new convention. The modalities of the exercise of free transit should be settled by bilateral or regional arrangements or agreements between the transit and land-locked States concerned.

2. The proposal submitted by land-locked and other geographically disadvantaged States in document A/CONF.62/C.2/L.39 seemed, however, to smack of hegemonistic tendencies. His delegation viewed with disapproval articles 3 and 5 of that draft, providing for the participation of land-locked and other geographically disadvantaged States in the exploitation of the non-living resources of the economic zones of neighbouring coastal States. There was no provision for any reciprocal right of transit States to exploit the mineral resources of land-locked States. The sponsors of the draft included countries such as Singapore, Sweden and Switzerland, whose *per capita* standard of living was among the highest in the world. It was certainly not equitable or just that such countries should share in the non-living resources of the economic zones of coastal States. Article 5 of the draft seemed to reintroduce the concept of trusteeship zones, which was a corollary of colonialism. While he recognized the right of land-locked and other geographically disadvantaged States to explore and exploit the living resources of the economic zones of neighbouring coastal States and to share in the revenues collected by the International Sea-Bed Authority along with other members of the international community, he could not concede any right to the exploration and exploitation of the non-living resources of economic zones or the sharing of revenues derived from such exploitation. Other draft articles on the same subject, with which his delegation was broadly in agreement, were to be submitted by a group of transit countries.

3. No condition should be placed on the right of land-locked States to free transit of persons and goods to and from the sea and he sympathized with their desire to have their right of passage to the sea guaranteed, to share in the living resources of the economic zones of neighbouring coastal States, and also to share in the revenues reverting to the International Sea-Bed Authority. He did not, however, agree that land-locked States should exercise rights in transit States which they did not reciprocate.

4. Mr. LEGWAILA (Botswana), describing the geopolitical situation of his country, said that it had to contend not only with the harsh realities of geography but also with political and racial tyrannies on its frontiers. For the last seven years Botswana had been trying to establish a democratic society despite that handicap imposed by geography, and now, because it had succeeded, and also because of its proximity to racist régimes, it received large numbers of political refugees. As long

as the current political situation prevailed in the neighbouring country, Botswana's right of access to the sea could not be fully guaranteed. Although his Government would continue to protest, it was not prepared to forego that right, which had been acknowledged in international law. His delegation therefore urged the Conference to include in the convention on the law of the sea the right of free transit and access to and from the sea, which would not be predicated upon agreements with neighbouring States. Guarantees of that right should be provided in the convention, so that any country, if denied access to the sea, could appeal for redress of its grievance through the international machinery provided for that purpose.

5. Turning to the question of charges for transit and use of port facilities, he said any charges or levies should be commensurate with the services rendered, and if the land-locked State used its own means of transport there should be no charge for transit through the territory of the transit State. Accordingly, he proposed that the article dealing with the right of transit should read as follows:

"The transit State shall accord free and unrestricted transit of persons and goods of land-locked States by any means of transportation. The traffic in transit shall not be subject to any customs duty or specific charges or taxes except for charges levied for specific services rendered. Means of transport of the land-locked State while in transit should not be subject to special taxes or charges higher than those levied for the use of means of transport of the transit State."

That draft article reflected article 6 of the Kampala Declaration (A/CONF.62/23). Although some representatives might consider it impractical and unreasonable, he pointed out that its provisions assumed that administrative arrangements regulating transit would be made. They were intended to ensure that the right of transit was fully entrenched in order to protect the land-locked State against any unreasonable coastal State, such as Botswana's neighbour.

6. Turning to the question of resources, he said he proceeded from the premise that the seas belonged to all mankind. Sharing meant sharing the resources of the sea, not the resources of coastal States. It was not enough to say that land-locked and other geographically disadvantaged States should share only in the living resources of the sea. Indeed, some coastal States were not even willing to share living resources on an equal and non-discriminatory basis, but wished to impose unjust conditions. The Declaration of the Organization of African Unity called on African coastal States to share living resources with their land-locked neighbouring States and he hoped that they would fulfil that obligation.

7. The aim of the Conference was to draft new articles governing the uses of the sea, not to help coastal States balkanize the seas for their own benefit. Any convention which discriminated against geographically disadvantaged States would create discord and conflict because land-locked States would struggle to ensure that their rights were fully recognized. In conclusion, he recommended to the Conference for adoption the two drafts submitted by land-locked and other geographically disadvantaged States and contained in documents A/CONF.62/C.2/L.29 and 39.

8. Mr. TREDINNICK (Bolivia) said that the Conference was unprecedented in the history of the law of the sea in that many

of the countries represented had not participated in the earlier 1958 and 1960 Geneva Conferences on the Law of the Sea. The success of the Conference would depend on the spirit of justice and solidarity of the participants. The future convention should certainly include provisions establishing the right of land-locked countries to free and unrestricted access and transit to and from the sea, which was already recognized under international law, as well as the rights set forth in the Kampala Declaration. The right of free and unrestricted transit to and from the sea should not simply be a form of international courtesy or a concession arbitrarily granted by the coastal State, but must be guaranteed in international law; that was important, because under existing conditions a considerable part of the resources of land-locked countries was spent to pay for transit rights to the sea. He did not believe that the right of free transit to and from the sea would affect or jeopardize the sovereignty of transit or coastal States.

9. Land-locked countries might well be classified as dependent countries with limited sovereignty; for example, Bolivia's extensive coastline on the Pacific Ocean had been taken from it by Chile in the 1879 war; as a result, Bolivia had become internationally dependent and increasingly backward socially and economically. His Government had naturally sought to ensure, through direct negotiation, that Bolivia would once again, as in the days of the Incas, have its own outlet to the Pacific Ocean in exchange for fair compensation. The question of an outlet to the sea for land-locked countries affected not only the region or subregion in which they were situated but the whole international community. Each country was responsible not only for its own progress or lack of progress but also for that of neighbouring countries. He suggested that free and unrestricted access to and from the sea could be provided in the case of Bolivia through a corridor to the Pacific Ocean, which could be negotiated under the auspices of the Conference as an edifying example of international solidarity. The world was changing and the necessary readjustments should be made in the new convention on the law of the sea.

10. The situation of land-locked countries was much more serious than could ever be imagined by coastal States. One seminar had concluded, after studying the problem, that land-locked countries such as Bolivia could well become the most backward countries of each region simply because foreign investment would tend to flow into coastal States which had their own ports. The United Nations Conference on Trade and Development (UNCTAD) had noted that the lack of a coastline added to the problems of development by increasing the cost of raw materials and international trade through the levying of various kinds of charges. For example, a unilateral increase in taxes and charges for use of port facilities in Chile and for transport through Chile had just been imposed on Bolivia. That action illustrated that a land-locked country had little or no say in decisions affecting its vital interests, such as the establishment of a railway line, measures to reduce congestion in ports, or freight charges. Inequitable international treaties also seriously affected least developed countries like Bolivia, which was just over 130 kilometres from the Pacific Ocean. Bolivia would never renounce its struggle for the implementation of its legitimate right to have its own outlet to the Pacific Ocean, as had been recognized by the Presidents of Venezuela and Mexico, by the Chamber of Deputies of Venezuela and by various other countries.

11. Mr. GODOY (Paraguay) said that documents A/CONF.62/C.2/L.29 and 39 submitted by land-locked and other disadvantaged States contained carefully drafted provisions reflecting the just and realistic interests of such States. They also reflected the principles and norms of international law applicable to such States, as contained in the Kampala Declaration. Draft articles reflecting the positions and needs of land-locked and other geographically disadvantaged States

with respect to the international sea-bed area would be submitted in the First and Third Committees.

12. Paraguay was a land-locked developing country making every effort, at every level, to overcome the disadvantages of its geographical situation. The recent crisis and increase in the price of oil and oil products had created serious problems for developing countries, which depended largely on imports for development and social progress. Paraguay was fortunate to have major international waterways, which were, however, navigable only part of the year; a navigation agreement had been concluded in 1967 with Argentina providing for freedom of navigation for Paraguayan and Argentine ships on those waterways on a reciprocal basis. Implementation of that agreement had been guaranteed by both parties in national decrees. Paraguay also enjoyed facilities in Brazilian and Chilean ports for transit trade. It thus had access to the sea through its international waterways part of the year and through the territory of Brazil throughout the year. Those arrangements reflected the wise policies of the Paraguayan, Argentine and Brazilian Governments, which were well aware that access to the sea was essential if Paraguay was to satisfy its economic requirements.

13. The ideal of justice and equity would not be fully attained until the right of land-locked States to access to the sea, *res communis*, was recognized as being on an equal footing with that of other States whose geographical situation enabled them to claim jurisdiction over large expanses of ocean space. The coastal States were certainly not acting illegally in claiming jurisdiction over such areas in order to protect the interests of present and future generations, but he wished to point out that those parts of the ocean and their resources also belonged to land-locked countries in that the waters of the rivers of land-locked countries flowed into the sea. He therefore appealed to all delegations to be fully aware of the historic realities of the situation and to appreciate the problems faced by land-locked countries, so that the conclusions and decisions of the Conference concerning the new law of the sea would contribute to the establishment of a new, more just and more humane world order.

14. Mr. MOLAPO (Lesotho) said that the Conference had to perfect and extend the efforts of the past, especially with regard to those rights recognized by the Barcelona Convention and Statute on Freedom of Transit¹ of 1921 and the 1958 Geneva Convention on the High Seas,² and to ensure that they became an integral part of any new Convention on the law of the sea.

15. Lesotho's geographical position was almost unique in that it was totally land-locked by a single other State. While both the Vatican City State and the Republic of San Marino were completely surrounded by Italy, they shared culture, language and tradition with that country. Lesotho, however, was surrounded by a neighbour whose domestic and foreign policies were at variance with its own, and its geographical isolation was cause for serious concern. For lack of any alternative, Lesotho had to use South African ports for access to the sea. Although Lesotho was connected by rail to the South African ports, it had had to rely heavily on air transport due to its difficult topography.

16. Lesotho's existing transit rights were based primarily on customary international law and the principle of necessity. The principles laid down in 1960 by the International Court of Justice in the right of passage over Indian territory case³ were to some extent clouded by the particular history of the Portuguese enclaves in India and the dealings between the Portuguese and British Governments over many years. Even though in any dispute involving Lesotho, an international tribunal, basing itself on customary law, would find in favour of freedom

¹ League of Nations, *Treaty Series*, vol. VII, p. 11.

² United Nations, *Treaty Series*, vol. 450, p. 82.

³ *Case concerning Right of Passage over Indian Territory (Merits)*, Judgment of 12 April 1960: I.C.J. Reports 1960, p. 6.

of transit, Lesotho would prefer to see the right of transit clearly recognized in a multilateral binding convention. The cautious *pactum de contrahendo* approach of article 3 of the 1958 Geneva Convention on the High Seas did not sufficiently create that right, nor were the conditions which a transit State might impose on the exercise of the rights of transit satisfactorily limited. The provisions of that Convention worked to the disadvantage of Lesotho which, being totally surrounded, had only one State with which it could negotiate. The same was true for other States with only one transit State linking them to their natural or reasonably practicable outlet to the sea. In such circumstances, where the transit State was in a position to dictate terms, the position of a country like Lesotho was far worse than that of a land-locked State with more than one adjacent transit State with which it could bargain.

17. His delegation agreed in general with the draft articles relating to land-locked States submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction in document A/AC.138/93 (A/9021 and Corr.1 and 3, vol. II, p. 16). It especially welcomed the confirmation in the preamble of those draft articles that the right of free access was an integral part of the established principles of international law and that the right of land-locked countries to free access to and from the sea derived from the application of the fundamental principles of freedom of the high seas and had further been strengthened by the principle of the area of the sea-bed as the common heritage of mankind. In the light of his country's experience, two aspects of that draft needed to be strengthened, and his delegation was preparing amendments to that effect.

18. First, there was a need to include air transport in the definition of "means of transport" in article I since air transport was an important means of carriage of goods and persons to and from the sea. Existing provisions of international law did not adequately guarantee that right. In view of the fact that all States, whether land-locked or coastal, were to enjoy the right of overflight over the high seas and the proposed new economic zones, there was nothing strange in the idea that the right of overflight should also be guaranteed for purposes of transit and access to and from the sea.

19. Secondly, the broad reference to "the legitimate interests" of transit States in article XIV was a matter for concern. Comparable provisions already existed in the Barcelona Convention and Statute on Freedom of Transit of 1921 and the 1965 Convention on Transit Trade of Land-locked States.⁴ There was no doubt that the legitimate interests of transit States should not be prejudiced by the exercise of transit or access rights, but those interests should be more exactly identified and defined. Most importantly, the transit State should not be able unilaterally to define its "legitimate interests" and thereby deny or impede transit or access to land-locked States. There should be specific provisions requiring consultations between the parties and compulsory arbitration as envisaged in article XXII. Arrangements for the passage of persons who were politically or otherwise unwelcome in the transit State should be devised and respected if recourse to the security clause was not to be made an instrument of harassment.

20. The interests of land-locked countries such as Lesotho with regard to transit and access to the sea were not confined to the traditional uses of the sea. Since the first two Conferences on the Law of the Sea in 1958 and 1960, conditions had changed and new vistas had been opened up. There was a new awareness of the interdependence of all States in a world of limited resources. Consequently the law of the sea needed to be radically reassessed. It was for those reasons *inter alia* that Lesotho had joined with a number of other States in sponsoring document A/CONF.62/C.2/L.39.

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

21. Mr. JAGOTA (India) said that his Government had accommodated and would continue to accommodate the legitimate interests of neighbouring land-locked States.

22. The condition of being land-locked was a basic geographical disability. Most of the land-locked States were also developing States and access to the sea was a necessity for their trade and communication with the rest of the world. The essential elements of transit had more or less been crystallized by State practice and international conventions. India had recognized the importance of transit as the lifeline of land-locked States and had, through bilateral agreements and in international forums respected and protected their interests in that matter. However, the legitimate interests of the coastal or transit State should also be borne in mind. Such interests might relate to the determination of routes and the protection of the security interests of the transit State. Accordingly, the modalities of transit should be settled by bilateral or even regional agreements. The transit State should also be able to expect a favourable response to any request for transit through a land-locked State should the need arise.

23. In its joint proposal to the sea-bed Committee on the exclusive fishery zone in document A/AC.138/SC.II/L.38 (*ibid.*, vol. III, sect. 27), his delegation had recognized the reasonable interests of land-locked States in the living resources of the exclusive fishery zone. However, the special rights and interests of the coastal State in the economic zone had to be kept in mind.

24. The continental shelf, which was the natural prolongation of the land territory of the coastal State, came under a separate régime in international law, and therefore the question of sharing its resources with another State, whether land-locked or not, did not arise. His delegation could not support the extreme position embodied in articles 3 and 6 of document A/CONF.62/C.2/L.39 concerning the sharing of resources of the continental shelf of a coastal State.

25. Land-locked States had the right to be adequately represented in the decision-making organs of the International Sea-Bed Authority and to derive their due and even preferential share of the benefits which might be obtained from sea-bed exploitation. Those matters pertained to the work of the First Committee and should therefore be discussed intensively in that forum.

26. Mr. ILLUECA (Panama) said that his country was led to participate in the debate on land-locked countries by considerations of political rather than physical geography, since Panama considered itself a geographically disadvantaged State whose access to the sea was difficult because of a colonial situation which had prevailed since 1903.

27. The case of his country was entirely exceptional since, despite its approximately 2,000-kilometre-long coast on both the Pacific and the Atlantic Oceans, convenient access to the sea had been barred by the expansionist policy of a super-Power. The characteristics of the greater portion of the Panamanian coastline were not favourable to the establishment of deep-water harbours, while in those places where it would be most easy to do so, the immediate hinterland was not appropriate for settlement or the exploitation of resources unless efforts beyond the capability of his country were made to develop it. It had been possible, however, to build two ports near Colón and Panama City at either end of the inter-oceanic Canal. Those two ports were indispensable for the exploitation of his country's principal natural asset, namely its geographical position, and to link its territory with the rest of the world. But the temptation to others had been too great, and Panama had fallen prey to colonialist policy in the early twentieth century. The exclusion of Panama's sovereignty from the most valuable part of its territory and in particular from its principal natural ports was a direct cause of its under-development.

⁴United Nations, *Treaty Series*, vol. 597, p. 41.

28. As the representative of Paraguay had pointed out, the close relationship between under-development and a land-locked position was not accidental. Without any real access to the sea, Panama was in the same situation as Paraguay and Bolivia, with which his country felt a strong bond of solidarity.

29. From the beginning of the nineteenth century, the Isthmus of Panama seemed destined for greatness, as Simón Bolívar himself had foreseen. Nevertheless, that destiny had not come to pass and Panama continued to suffer from under-development, while its most profound aspirations for full independence were frustrated. That situation was the result of a strategy conceived and systematically pursued by the forces of colonialism and neo-colonialism.

30. Despite thoughts to the contrary, his country was not in a more advantageous economic situation because of the presence of the Canal. The benefits derived by Panama were meagre when compared to those of the super-Power, while Panamanians working in the Canal Zone were the victims of racial and job discrimination.

31. The new convention on the law of the sea should include provisions which would preclude the kind of colonial situation which existed in the Isthmus of Panama, put an end to the occupation of ports, canals, islands and ocean space by foreign Powers and secure free access to the sea and an equitable sharing in its resources for the land-locked and geographically disadvantaged States.

32. His delegation supported the well-founded aspirations of Bolivia and Paraguay and sought an honourable solution to the problems of the land-locked and geographically disadvantaged States of Latin America and other regions with regard to their patrimonial seas.

33. In its struggle to gain recognition of its just claims, Panama had received and was grateful for the support of many delegations, including those of Venezuela and Mexico.

34. The question of the Panama Canal had been designated as a matter of common interest for the countries of Latin America at the meetings of Bogotá, Tlatelolco and Washington attended by the Foreign Ministers of the Latin American countries. After 10 years of difficult negotiations between Panama and the United States of America on the matter, a new climate fostered by Latin American solidarity and the new orientation of United States policy seemed to offer new prospects for those negotiations. The "Tack-Kissinger" Joint Declaration of Principles on New Panama Canal Treaty signed by the two countries in February of 1974 expressed the intention of agreeing to the prompt termination of United States jurisdiction in the Canal Zone or to the limitation of the duration of the Treaty by which the United States arrogated to itself the unilateral administration and control of the Canal. Upon the expiration of that Treaty control of the Canal would revert to the Republic of Panama. Meanwhile the impatience and dissatisfaction of the Panamanian people continued to grow in the face of the affront to the territorial integrity and political unity of their country which the foreign presence represented.

35. Despite its unfortunate fate, Panama still believed in law and justice. His delegation hoped therefore that the new convention on the law of the sea would deal with the kind of situation he had described.

36. Mr. MANGAL (Afghanistan) said that in his statement at the 33rd plenary meeting, the head of his delegation had dealt in some detail with the special requirements of land-locked States and the provisions which a future convention should contain with regard to the rights and interests of those States.

37. The difficulties which land-locked States experienced as a result of their geographical position were well known. Such countries had an established right, under international law, to free access to and from the sea. It was generally recognized

there was an urgent need to find just solutions in that respect, in the form of legal norms in the future convention.

38. As a direct result of their disadvantageous geographical situation, land-locked countries experienced difficulties and restrictions in their transit trade. Having no sea-coast, their foreign trade was largely dependent on transit facilities in transit States. The ever-increasing costs of transit and transportation led to higher priced imports and exports. Land-locked States must have the right of free and unrestricted transit to and from the sea, without discrimination, by all means of transport and communication including adequate port facilities in transit States, even on a preferential basis, in order to alleviate their situation. His delegation did not agree with the contention that the land-locked States' right of free transit might infringe upon the legitimate interests of transit States, since all States had an obligation to observe certain fundamental rules of international law.

39. His delegation attached great importance to the participation of land-locked States, on an equal basis and without discrimination, in the exploitation of the resources of the sea. The rights and interests of land-locked and other geographically disadvantaged States with respect to the renewable and non-renewable resources of the economic zone should be ensured.

40. Land-locked States should also participate in the exploitation of the resources in the international area. In order to be economically viable, that area should be extensive and contain sufficient resources to warrant the establishment of an International Sea-Bed Authority to give effect to the concept of the common heritage of mankind. Land-locked and other geographically disadvantaged States should be adequately and proportionately represented in all organs of the proposed Authority and should have equal rights with other States in the process of decision-making.

41. The support expressed at the Conference for the position of the land-locked States was a clear indication that the international community was determined to end the injustice done to those States and to include adequate provisions in the future convention to guarantee protection of their rights and interests. He thanked the representatives of Iran and India for the friendly sentiments which they had expressed concerning his country. His delegation appreciated the prevailing understanding in the Conference with regard to the rights and interests of land-locked States. He hoped that that understanding would result in favourable consideration of the draft articles relating to land-locked States submitted by a group of seven land-locked States to the sea-bed Committee (*ibid.*, vol. II, p. 16) and the explanatory paper on those draft articles (A/CONF.62/C.2/L.29) which the representative of Nepal had introduced at the previous meeting, as well as the proposals set forth in the Kampala Declaration and the draft articles in document A/CONF.62/C.2/L.39.

42. As there appeared to be no difference of opinion on the item under consideration, there was no need to formulate main trends as in the case of other items. The prevailing understanding of the problems of land-locked States and other geographically disadvantaged States must be translated into treaty articles in the future convention in favour of those States.

43. Mr. GOERNER (German Democratic Republic) said that in the interest of the international community as a whole the future convention should take due consideration of the rights of land-locked and other geographically disadvantaged States in order to ensure its universal application. His delegation regarded the rights of land-locked States to free access to the sea and sea-bed as one of the basic principles of the law of the sea and as an integral part of the principles of international law. If land-locked States were to make full use of the freedom of the seas, it was indispensable that transit States should assume concrete obligations regarding the guarantee of free and unrestricted transit, including access to the sea through navi-

gable rivers and other transport routes which passed through their territory and the use of maritime ports and port installations by the ships of land-locked States. General regulations concerning land-locked States in the future convention should also provide for the possibility of bilateral, regional or multilateral agreements between land-locked States and transit States with regard to the special interests of the States concerned.

44. His delegation concurred with the views expressed by many delegations in the course of the discussions that the transit State should have the right to take measures to ensure that exercise of free and unrestricted transit should in no way infringe on its sovereignty and domestic legislation. It also shared the view that the future convention should elaborate and confirm the right of land-locked States to free access to the sea-bed beyond the limits of national jurisdiction for the purpose of exploiting and utilizing the resources therein. His delegation supported the basic idea of the proposals in document A/CONF.62/C.2/L.39 that the land-locked and other geographically disadvantaged States should have an adequate share in the exploitation of the resources of the high seas and considered that the seven-Power draft articles relating to land-locked States submitted to the sea-bed Committee and the explanatory paper on those draft articles constituted a constructive basis for discussions on regulations concerning the rights of land-locked States in the future convention on the law of the sea.

45. Mr. CARPIO CASTILLO (Venezuela) stated his country's position with regard to the provisions which the future convention on the law of the sea should contain on land-locked countries. His country was sympathetic to the aspirations of those countries to have access to the sea within the framework of effective international co-operation, since access to world maritime communications was essential for their survival.

46. His country was particularly sensitive to the position of Latin American countries whose development was hindered by lack of access to the sea, and in that connexion he would recall the support for land-locked countries which the President of Venezuela had expressed in his statement at the 14th plenary meeting inaugurating the Conference.

47. Coastal States should take account of the interests of States which were less favoured and geographically disadvantaged through having no coast, particularly when such countries were under-developed. In some cases it was difficult to define the term "geographically disadvantaged" but in the case of land-locked developing countries the situation was self-evident since land-locked countries which had benefited from other favourable historical and geographical circumstances had achieved considerable economic development.

48. Conditions varied in the case of individual States and each case required special treatment. It was the view of his delegation that suitable solutions could be achieved on the basis of regional arrangements by adopting the guiding principles of equity and justice which should be incorporated in the future convention.

49. His delegation's attitude to proposals concerning the item under consideration would be based on the position he had already outlined.

50. Mr. ARAIM (Iraq) said that the question of the reformulation of the rules of the international law of the sea was the main task of the Conference. As a developing country, Iraq realized the interests of developing coastal States in extending their jurisdiction beyond the territorial sea. However, it considered that such an extension should not diminish the rights of land-locked countries and other geographically disadvantaged States to enjoy equal rights in the living resources of zones adjacent to the territorial sea of neighbouring coastal States and to share in benefits derived from the resources of the high seas. Progressive development of the rules of international law

should not adversely affect the rights of land-locked and shelf-locked States and those with short coastlines.

51. The rights of coastal States to the continental shelf adjacent to their coast had been recognized in the 1958 Geneva Convention on the Continental Shelf.⁵ However, there was a group of States which could not extend their jurisdiction over the continental shelf to the extent provided for in that Convention because their continental shelf was locked in by the continental shelves and territorial seas of neighbouring adjacent or opposite States. Those States had not been able to extend their jurisdiction up to the boundary of the international sea-bed area. In that connexion, he reiterated the views expressed by his delegation in the plenary and in the course of the discussion on the continental shelf with regard to the importance of the delimitation of overlapping continental shelves on the basis of equitable and just principles. In the view of his delegation, proposals to extend national jurisdiction of coastal States beyond the territorial sea would not serve the interests of the world community as a whole if they did not take account of the rights of geographically disadvantaged States which did not have direct access to the international sea-bed area and which were not able to extend their maritime jurisdiction in the same way as other coastal States would be permitted to do under the provisions of the proposed convention. He expressed the hope that the interests of all States would be safeguarded in such a convention.

52. His country had submitted proposals to the sea-bed Committee concerning the inclusion of provisions relating to the interests of geographically disadvantaged States in a future convention. He expressed satisfaction that the concept was gaining support at the Conference. Those States should have equal rights to the living resources of the maritime area of neighbouring coastal States. They should also have free access to the international sea-bed area and other parts of the high seas in order to share in the benefits from the high seas on the same basis as other States. Those rights could not be guaranteed through bilateral or regional arrangements and should be embodied in the proposed convention. However, regional arrangements could play an important role in the implementation of the provisions of the convention.

53. Mr. ABDULLAH KAMIL (Indonesia) reiterated the views expressed by the head of his delegation in his statement in the plenary concerning the interests of land-locked and geographically disadvantaged States. It appeared that a certain consensus was emerging with regard to the need to accommodate the legitimate and reasonable interests of those States.

54. In the view of his delegation, access to and from the sea was one of those legitimate and reasonable interests. Land-locked countries should have the right to such access and should be given facilities to exercise that right. At the same time it should be clearly understood that that right of access was exercised in the sovereign territory, whether land or water, of neighbouring coastal States. The exercise of that right should not be detrimental to the equally legitimate and reasonable interests of transit States. It was the view of his delegation that bilateral or regional negotiations and agreements were essential for the implementation of that right, which should be embodied in the future convention on the law of the sea. With regard to the desire of land-locked countries to share in the living resources of the sea in the economic zone of coastal States, his delegation considered that it would be possible to accommodate that desire on the basis of bilateral or regional arrangements on the lines of the proposals in the Declaration of the Organization of African Unity.

55. Land-locked and other geographically disadvantaged countries should participate fully in the management and exploitation of the resources of the sea in the international area which was the common heritage of mankind. His delegation

⁵ *Ibid.*, vol. 499, p. 312.

considered that the least developed among land-locked and geographically disadvantaged States should be given special consideration in the sharing of benefits deriving from the exploitation of those resources.

56. Mr. KHARAS (Pakistan) said that the item under consideration was of direct interest to his country, which considered the problem of land-locked countries in terms of its practical aspects. Land-locked States were geographically disadvantaged and their difficulties should be appreciated and alleviated. However, geographical impediments were not the only reason for the relatively low level of development in some land-locked countries and should not be considered in isolation from other factors which also contributed to the lack of development.

57. As a developing country, Pakistan appreciated the aspirations of other developing countries and recognized the need for land-locked countries to have free access to and from the sea. It agreed that for such access to be effective, transit States should accord full transit facilities to land-locked States. However, the question arose as to whether land-locked States should be accorded free transit through the territory of the transit State and make use of its transit facilities as an extraterritorial right or whether they should do so by virtue of an agreement with the sovereign transit State. The answer was that because of legal and practical considerations, the claims of land-locked States could not be asserted independently of appropriate agreements with the transit States concerned. Furthermore, the use of ports by land-locked countries should be restricted to principal ports of transit only and to mutually agreed prescribed routes.

58. Article 3 of the Geneva Convention on the High Seas and article 2 of the New York Convention on Transit Trade of Land-locked States contained provisions which stipulated that the access and transit of land-locked States should be subject to common agreement between the States concerned and based on the principle of reciprocity. Thus, neither access nor transit by land-locked States were unqualified legal rights but stemmed from agreements between the parties concerned. Since transit by a land-locked State was in effect an encroachment on the sovereignty of the transit State, only the latter could determine the extent to which it was willing to accept such a limitation on its sovereignty. Furthermore, on the basis of the established and recognized principle of reciprocity, transit States might, in consideration of the facilities which they accorded land-locked States, require the latter to accord them similar facilities in furtherance of their economic and trade interests. In practice, arrangements based on mutual agreements had been very satisfactory in meeting the needs of land-locked States as well as the interests of transit States. Such arrangements could be modified from time to time to meet changing circumstances but there was no reason to change the equitable and practical principles governing the access and transit of land-locked States to the sea.

59. The concept of the exclusive economic zone had raised the question of participation by land-locked States in the resources of the economic zones of neighbouring coastal States. His delegation reiterated that the non-living resources in exclusive economic zones were simply non-negotiable but that, given a spirit of goodwill, ways could be found to accommodate the interests of land-locked States in the living resources of the economic zones of neighbouring coastal States. No State had the right to share in resources which under existing law belonged to a coastal State. However, living resources over which coastal States had not previously exercised sovereign rights might be shared under appropriate arrangements. That position had been repeatedly endorsed by African Heads of States.

60. Some of the proposals in documents A/CONF.62/C.2/L.29 and 39 raised doubts concerning the transit State's sovereignty and would negate the very concept of the exclusive

economic zone. If developing transit States had to share their scanty resources with others they would become disadvantaged States. Excessive demands could undermine the concept of the exclusive economic zone which was the cornerstone of the new law of the sea being formulated at the Conference.

61. In consultation with other countries, his delegation had prepared draft articles on the item under consideration (A/CONF.62/C.2/L.48). Informal consultations and statements made in the Committee had shown that those proposals enjoyed the support of a number of countries. He trusted that the articles would be duly reflected in the summary of main trends being prepared by the Officers of the Committee on the item under consideration.

62. Additional proposals would be required to cover the question of access by land-locked States to the international sea-bed area. His delegation supported the participation of land-locked countries in the exploration and exploitation of the resources in the area beyond national jurisdiction. Land-locked countries should have adequate representation in the international machinery to be set up to administer the area. Decisions on questions of substance in organs of the International Sea-Bed Authority should take due account of the special needs and problems of land-locked and transit States, which should participate in the process of decision-making with regard to matters affecting their interests.

63. One way of meeting the concern which had been expressed for the plight of the land-locked States would be to set up a world-wide system which would ensure a flow of resources to developing land-locked States from those coastal States which were economically developed and could share resources without harming their economies. Such an arrangement would be preferable to asking developing coastal States to share their urgently needed resources with neighbouring land-locked States, and would be consistent with the International Development Strategy for the Second United Nations Development Decade (General Assembly resolution 2626 (XXV)) and the Declaration on the Establishment of a New International Economic Order adopted at the sixth special session of the United Nations General Assembly in its resolution 3201 (S-VI).

64. Mr. ARAMBURU MENCHACA (Peru) said that his delegation recognized and strongly supported the traditional right of access by land-locked States to and from the sea, but that right was closely linked with the right of transit through the territory of the neighbouring coastal State, which involved problems of sovereignty and reciprocity. It also recognized the right of land-locked States to participate in the benefits of the sea-bed area and in the machinery to be set up for exploiting it. Both those ideas were embodied in the draft articles submitted jointly to the sea-bed Committee by Peru, Ecuador and Panama (A/9021 and Corr. I and 3, vol. III, sect. 16). Furthermore, bearing in mind particularly the neighbouring countries Bolivia and Paraguay, Peru had considered the possibility of a preferential régime for nationals of land-locked States in the territorial waters or economic zone of the coastal State.

65. His delegation would therefore support the inclusion of the following principles in the convention: the right of free access to and from the sea; the right of freedom of communication in the maritime area of sovereignty and jurisdiction; the right of free transit through the neighbouring coastal State's territory; preferential treatment for the use of installations and services of transit ports; exemption from customs duties, taxes and other transit charges, except for special services; preferential treatment in respect of access of nationals of land-locked States to exploitation of living resources in the areas adjacent to the area of national jurisdiction; full enjoyment of the freedoms of the high seas, including navigation, overflight, laying of cables, fishing and scientific research; the right to equal participation in the benefits derived from the international sea-bed area; and the right to full representation in the organs of the International Sea-Bed Authority.

66. Some of those principles would need to be regulated by bilateral or regional arrangements between the land-locked countries and their neighbours, not only for reasons of sovereignty but in the light of particular geographical, historical or political circumstances.

67. He hoped that those principles, many of which his country had already implemented, would be accepted, particularly by the land-locked countries. That would necessitate the renunciation of extreme positions, for example on the question of authority in the waters under the exclusive jurisdiction of the coastal State. It might be useful to consider setting up an informal working group composed of the delegations of developing land-locked and coastal countries, to permit a direct exchange of views and clarification of positions. The situation of the land-locked States should be dealt with not on a regional or international basis but in terms of individual cases, since each one had its own special problems requiring special solutions.

68. His delegation had been in contact with the delegations of Pakistan and other countries which had prepared some draft articles on the question of land-locked countries. Although it could not sponsor the draft articles, because of differences of view regarding the area of national jurisdiction, his delegation was in general agreement with the ideas embodied in them.

69. Mr. TÜRMEŖ (Turkey) said that he wished to stress three aspects of the problem of the land-locked and other disadvantaged countries.

70. In the first place, their rights must be established and defined. There was a broad consensus to the effect that those States should have the right to share in and benefit from the exploitation of the sea's resources. That right was set forth in section C, paragraph 9, of the Declaration of the Organization of African Unity contained in document A/CONF.62/33. The draft proposals submitted by a number of land-locked and other disadvantaged countries in document A/CONF.62/C.2/L.39 stated, in articles 2 and 3 respectively, that the right should cover the non-living as well as the living resources of the economic zone. His delegation had every sympathy with that view but realized that there was a divergence of opinion stemming from the widely held view that non-living resources were non-renewable. He hoped that the Organization of African Unity, which had shown statesmanship and leadership in the preparation of its proposals, would be able to find a solution accommodating the two divergent interests. A more gradual approach to the question of non-living resources might be the best method. In any case, the rights of land-locked countries should include access to the sea, provided it did not prejudice the legitimate rights of the transit States, since the coastal States granting such access were at a disadvantage compared with States that did not grant access.

71. The second aspect was the problem of determining which States should benefit from the right to participate in the exploitation of the resources of the economic zones of other States. There was no problem as far as the land-locked countries were concerned, but the question was more subtle and complicated in respect of the other geographically disadvantaged countries. In its statement on the economic zone his delegation had stressed the importance of an accurate definition of the disadvantaged State and had pointed out that the International Conference on Marine Pollution held in London in 1973 had identified five semi-enclosed sea areas as special areas for the purposes of pollution. Since those areas related solely to semi-enclosed seas, where the coastal States could not have 200-mile economic zones, they could be taken as a starting-point in identifying geographically disadvantaged States. It was essential for the Conference to determine the disadvantaged States: friction was bound to arise if the problems were left to be solved on a regional basis. The criteria should be primarily geographical. In that respect he supported the views of the

representatives of Austria and Sweden as expressed at the 32nd meeting.

72. The third aspect concerned the areas in which the land-locked and other disadvantaged States would participate in the exploration and exploitation of the resources of the economic zones, in exercise of their rights under the new convention. A strictly regional approach would not produce a satisfactory global solution, since there were whole regions which were disadvantaged. In such cases the individual States of disadvantaged regions should be given the right to participate in the exploitation of the resources within the economic zones to be established in the seas adjacent to such regions.

73. The three aspects he had referred to were closely related and should be dealt with together. In that respect, he reluctantly disagreed with the approach adopted in document A/CONF.62/C.2/L.39, although not disagreeing with its provisions as a whole.

74. The rights of land-locked and other geographically disadvantaged countries were an integral part of the convention and should not be overlooked. The success of the Conference would depend to a great extent on striking a balance between the interests of the geographically disadvantaged States, including the land-locked States, and the interests of the coastal States, including the major maritime Powers.

75. Mr. ZEGERS (Chile) regretted that the representative of Bolivia had considered it appropriate once again to refer to a matter unconnected with the agenda and to events which had occurred over 100 years earlier and had been overtaken by the course of history.

76. Chile and Bolivia were united by bonds of all kinds, such as the Andean Pact of 1969. Chile, as a country of transit for Bolivia, granted the latter access to its ports for the shipping of goods, on the basis of equality with Chilean nationals; the terms of that arrangement were probably the most generous in the whole world, as could be seen from the relevant United Nations treaties. Under a treaty of 1937, Chile recognized and guaranteed complete freedom of transit through its territory and its major ports for persons and goods in transit to or from Bolivia.

77. The representative of Bolivia had unfortunately made inaccurate references to a war which had occurred a century earlier and which had been superseded by a firm friendship between the former belligerents. All the frontier problems between Chile and Bolivia had been resolved by the 1904 Peace Treaty, signed with the full approval of their respective peoples more than 20 years after the conclusion of the war in question.

78. Chile had been and continued to be ready to listen to the requests made by Bolivia and, within the limit of its powers had provided the appropriate means for satisfying them so long as they did not imply a revision of international agreements freely entered into by both countries. The recent meeting in Brazil between the heads of State of the two countries reflected the spirit of goodwill that motivated the Government of Chile.

79. He wished to reiterate categorically that the matter raised by the representative of Bolivia was completely outside the mandate of the Conference, which did not cover the consideration of bilateral problems that a particular State might wish to raise vis-à-vis another State. He also wished to reaffirm his country's strong feelings of friendship towards Bolivia.

80. Mr. FLANGINI (Uruguay), speaking in exercise of the right of reply, said that his delegation had expressed its understanding of the problems of the Latin American land-locked countries in documents and in statements both in the sea-bed Committee and at the Conference. His country granted Paraguay and its nationals the fullest access to the sea and to port facilities, although it did not receive reciprocal treatment. For example, Paraguayan nationals were allowed to unload, store, process and reload goods without charges. In that connexion

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

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

82. Mr. TREDINNICK (Bolivia), speaking in exercise of the right of reply, said that the 1904 Treaty to which the Chilean representative had referred had been imposed on Bolivia as a

conquered country and had compelled it to cede its entire sea coast. That Treaty could not be cited as a model.

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

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

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

The meeting rose at 6.10 p.m.

34th meeting

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

Chairman: Mr. Andrés AGUILAR (Venezuela).

Land-locked countries (concluded)

[Agenda item 9]

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

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

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

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

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

number of straits States were asking for special rights in respect of international navigation.

6. The 1965 New York Convention on Transit Trade of Land-locked States¹ had been ratified by only a few countries. The Soviet Union, which had for many years co-operated with its land-locked neighbours Mongolia and Afghanistan in the matter of transit of their goods through its territory, had ratified it. In its view, the principle of free access by land-locked countries to the sea should be a universally recognized principle of international law, the exercise of which should not be subject to any conditions whatever, including reciprocity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²League of Nations, *Treaty Series*, vol. VII, p. 11.

³United Nations, *Treaty Series*, vol. 450, p. 82.

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

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

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

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

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

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

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

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

28. The transit States and the land-locked States had always agreed on two points: that it was in their common interest to recognize the right of access and that special agreements should be concluded to regulate the modalities of the exercise of free transit, adapted to different situations and taking into account the sovereignty and interests of the transit States. Today the right of access of land-locked States to the sea was a right recognized and laid down in international treaties. The principles of freedom of the sea and equality of States were firmly established in international law and the right of access to the sea was a corollary of those principles. The question arose

whether the right of access should be recognized in the new legal order as a special right granted only to land-locked countries because of their geographical situation or whether it should be presented as a particular manifestation of a more general right of transit, valid for all States. A new approach should be taken with respect to the contents of the right and the guarantees for its exercise, in other words, the right of access should be recognized as a right to be granted by transit States quite apart from its conventional, narrow interpretation, particularly since statements made in the Committee suggested that transit States were not prepared to grant the right of access to their neighbours without certain firm guarantees. The right of access was, however, vital to the land-locked and developing countries and to the transit States as well, since it was common knowledge that no State today was entirely self-sufficient. It should be interpreted in a more general sense in order to compensate the land-locked countries for the disadvantages resulting from their geographical situation. Since any restrictions to the expansion of their economies would create serious imbalances and would be a threat to international peace and security, the right of access should be recognized as a positive factor in peaceful relations between nations. The relevant provisions in document A/AC.138/93 (A/9021 and Corr.1 and 3, vol. II, p. 16) and in document A/CONF.62/C.2/L.39 deserved special attention as they complemented previous treaties.

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

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

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

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

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

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

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

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

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

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

38. The Conference had to take into account the claims of the land-locked and other geographically disadvantaged countries if it was to arrive at a widely accepted convention. Certain delegations had expressed doubts regarding the possibility of defining geographically disadvantaged countries, but his delegation saw no great difficulty on that subject. The Conference was a conference on the law of the sea and it was in relation to the sea and its resources that the geographically disadvantaged countries should be defined. The classification of a State as

geographically disadvantaged should depend on the measure of its access to the high seas and of its share in the living or non-renewable resources of the sea. In that connexion, the delegation of the Netherlands had submitted as an example a remarkable document which mathematically measured the relative opportunities of the various countries to take advantage of an exclusive economic zone. A similar calculation could be made with respect to the continental shelf. It was also possible to define objectively the future positions of States with respect to the use of the sea and its resources. That was most necessary today because while the sea had always been regarded as being open to all as a common heritage, it was today increasingly being divided and appropriated by States. The need to ensure that land-locked and other geographically disadvantaged States had access to the sea and to its resources was therefore more urgent.

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

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

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

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

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

Mr. Aguilar (Venezuela) resumed the Chair.

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

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

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

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

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

48. Mr. LUPINACCI (Uruguay) said that the future convention must provide for three types of rights for the land-locked

countries: first, the rights to which they were entitled on an equal footing with coastal States on the high seas and in the international sea-bed area beyond the limits of national jurisdiction; secondly, the rights without which the first category of rights could not be effectively exercised, including free access to and from the sea, free transit across neighbouring coastal States and the use of their ports and other facilities; thirdly, preferential rights to exploit the living resources of the national maritime areas of coastal States of the region or subregion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

thority. His delegation was totally opposed to any attempt to establish categories or classes of member States and would oppose any manoeuvre to place the land-locked States in a disadvantageous position in the organs of the Authority.

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

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

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

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

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

disadvantaged States who had spoken previously. He was heartened by the statements of representatives of other States who had become aware of his country's difficulties and needs and had supported its claims with respect to the future law of the sea. Earlier conventions on the law of the sea had been adopted without sufficient regard to the interests of land-locked States belonging to continents whose land mass extended into a continental shelf. Article 1 of the 1958 Convention on the Continental Shelf⁴ had adopted a virtually limitless definition of the continental shelf. Recent advances in marine technology had rendered practically all of the submarine areas exploitable. By that token almost all submarine areas would fall under the national jurisdiction of coastal States—a situation that would spell an end to the principle of the common heritage of mankind. Possible reasons why there were such discrepancies in the development of the concept of the continental shelf might have been: first, that a significant number of land-locked and other geographically disadvantaged States had not been independent when treaties and other conventions were negotiated on their behalf by colonial Powers, and their interests had been completely ignored; and secondly, the history of the continental shelf had begun only in the 1940's. Had those two facts been taken into account, the concept of the continental shelf would have been appropriately modified and consequently upheld.

67. His delegation had been among the sponsors of document A/CONF.62/C.2/L.39 and urged other States to follow the positive example set by the African Heads of State and Government in part C, paragraph 9 of the Declaration of the Organization of African Unity (A/CONF.62/33). Although the explanations contained in document A/CONF.62/C.2/L.29 were largely sufficient, he wished to state other views held by his delegation which had guided its approach to the subject of the right of free access to and from the sea and other related rights and interests of land-locked countries. The community of nations had recognized for centuries the need for land-locked States to have access to the sea and had made several attempts to adopt a satisfactory convention on the subject. Those efforts to promulgate international treaty law had made a significant contribution to international customary law on the subject.

⁴ *Ibid.*, vol. 499, p. 312.

Nevertheless, there were still short-comings. The obligation that the 1958 Convention on the High Seas had placed on transit States and land-locked States to conclude agreements ensuring free access to the sea had led to a lack of uniformity in observance of the provisions of the Convention. First, there was a delay between the entry into force of the Convention and the conclusion of bilateral agreements. Secondly, those agreements might negate the provisions of the Convention itself, particularly since there was an inherent inequality between States needing transit to the sea and those that did not. Thirdly, the provision that transit facilities should be given on a reciprocal basis was very misleading and did not take into account the realities of the problem. Only the coastal States were in a position to offer land-locked States the right of transit to the sea. Reciprocity was thus a meaningless condition and should not be included in the future convention as a condition for the exercise by land-locked countries of their right of transit to and from the sea.

68. Future international law must also give due attention to contemporary realities. His own country's right of free access to and from the sea by its southern routes had been violated from time to time despite condemnations by the international community. Zambia had decided to abandon the southern route in order to give effect to the United Nations resolutions calling for economic sanctions against the rebel colony of Southern Rhodesia. His country was grateful for the transit facilities offered by friendly neighbouring and other States. He urged the other States to follow the example set by the African Heads of State and Government in part A, article 2, of the Declaration of the Organization of African Unity. A reaffirmation of the eight principles relating to the transit trade of land-locked countries adopted by the United Nations Conference on Trade and Development in 1964⁵ might well be a starting point for work on articles on the right of access.

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

The meeting rose at 1.15 p.m.

⁵ See *Proceedings of the United Nations Conference on Trade and Development*, vol. 1, *Final Act and Report* (United Nations publication, Sales No. 64.II.B.11), annex A.I.2.

35th meeting

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

Chairman: Mr. Andrés AGUILAR (Venezuela).

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

[*Agenda item 10*]

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

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

3. His country supported the concept of the exclusive economic zone as a fundamental notion embodying the principles of sovereignty over renewable and non-renewable resources

* Resumed from the 32nd meeting.

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

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

to countries like his own, which were small and poor, with narrow continental shelves and few marine resources. An exclusive economic zone would be meaningless to his country without access on equitable terms to the living resources of the countries of the region.

5. The respective rights and obligations of States were set forth satisfactorily in article 2 of the Jamaican proposals, though he would prefer to see the words "on terms and conditions which are equitable to the States concerned" inserted in paragraph 1 and the words: "on the basis of regional, sub-regional and bilateral agreements or other arrangements which have legal effect in international law" inserted in paragraph 2. He was also satisfied with the definition of developing geographically disadvantaged countries contained in article 5 of the Jamaican proposals, which covered the situation of countries like Barbados. There seemed to be embodied in the concept of the disadvantaged State the notion that the economy of that State must inevitably be adversely affected in some substantial way by the new régime for the exclusive economic zone, although that régime had in reality been intended to benefit, not harm, the economies of such countries.

6. Although he had confined his statement to the developing geographically disadvantaged countries, he supported the general proposals concerning the right of the land-locked countries to free access to the sea and its living resources in a region. Those countries must also be provided for in a convention intended to be of balanced political and economic benefit to the whole community of nations.

7. Mr. VAN DER ESSEN (Belgium) said that the item under discussion was not itself a problem, but was closely related to other questions of the law of the sea. Adoption of the concept of a broad economic zone adjacent to the territorial sea would mean that ships from many countries with narrow seas could reach the ocean only by crossing the adjacent zones of other countries. Those countries with narrow seas should be given adequate guarantees to ensure them freedom of navigation between their ports and the sea without being subject to the arbitrary jurisdiction of the coastal States. It would be reasonable for those countries to respect the coastal State's jurisdiction in respect of international measures on pollution, for example; but compliance with national regulations, which might vary widely from country to country, could place them in an impossible position and endanger their maritime activities. Furthermore, their fishermen should be able to cross the economic zones of other countries with their catches, without the risk of being suspected of illegal fishing.

8. Those problems were of vital importance to the geographically disadvantaged countries, in particular those with access to semi-enclosed seas which engaged in fishing activities. His country, which had only 67 kilometres of coastline, bordering on a narrow sea, but possessed the fourth largest world port in terms of tonnage, was very interested in the issue. However, the guarantees it called for should also benefit the land-locked countries. It was essential for the future convention to provide and guarantee the right of access to the sea and the right to participate in the use of the sea for all countries with similar handicaps.

9. Mr. JUNIUS (Liberia) said that there was a wide disparity between the positions of countries like his own which did not possess wide continental shelves and those with shelves extending hundreds of miles beyond the contemplated 200-mile economic zone. The only way to remove such disparities was to abolish the idea of the continental shelf. That would also give meaning and content to the idea of treating the high seas as the common heritage of mankind, which was the aim of the Conference.

10. Mr. CHAO (Singapore) said that the representatives of Nigeria and other countries, at previous meetings, had raised two very interesting ideas: first, that developed disadvantaged States should not ask for a share in the resources of the sea;

and secondly, that some land-locked States possessed mineral resources on land and should also not ask for a share in the resources of the sea.

11. He agreed in principle with the idea that the sea's resources should go only to the most deserving. If development disqualified a disadvantaged State from obtaining the resources of the sea, developed coastal States should also be disqualified. Similarly, if the availability of land mineral resources disqualified disadvantaged States, it should also disqualify coastal States. If followed, therefore, that a coastal State which was either developed or possessed mineral resources on land should not claim an economic zone or rights over the sea-bed. Marine areas not claimed by coastal States according to those criteria should fall under the jurisdiction of an international ocean authority which would manage them for the benefit of all mankind. He commended such a refreshing approach, under which there would be no need to differentiate between advantaged and geographically disadvantaged States.

12. However, the Nigerian delegation's proposals in document A/CONF.62/C.2/L.21/Rev.1 did not differentiate between developing or developed coastal States which did or did not possess mineral resources on land. In other words, any coastal State, irrespective of development or of mineral potential on land, was entitled to claim an economic zone. Then why should those two considerations apply to the disadvantaged States? Why the double standard and discrimination? Rules or criteria should be applied uniformly.

13. It should be remembered that a developed land-locked State sharing the resources of the economic zone would be sharing the resources of a developed neighbour. If it were argued that a developed land-locked State should not share in the resources of the economic zone, then the developed coastal State would be in a more advantageous position than the developing coastal State which had to share with its developing land-locked States. That would clearly create a ridiculous situation.

14. If the Nigerian representative was contemplating introducing those new ideas, namely considerations of development and of mineral potential on land, into his proposal, his own delegation would like to co-operate with him and perhaps become a sponsor of the final proposal.

15. With regard to the proposals in document A/CONF.62/C.2/L.39 for the participation of land-locked and other geographically disadvantaged States in the exploitation of the non-living resources of the economic zone of neighbouring coastal States and for revenue-sharing from the exploitation of the non-living resources of the economic zone, it had been argued that the right over the sea's mineral resources was an acquired right under the 1958 Convention on the Continental Shelf.¹ All countries had acquired rights over the resources of the sea. The somewhat contradictory reasoning advanced to justify the establishment of an economic zone and the retention exclusively by the coastal State of the benefits derived from exploitation of the mineral resources of that zone suggested that there was an Eleventh Commandment: "Thou shalt obey the Continental Shelf Convention but thou shalt not obey the other three Geneva Conventions." The suggestion that the proposals submitted by the land-locked and geographically disadvantaged States in document A/CONF.62/C.2/L.39 were an attempt to dominate the coastal States was unjustified. His delegation could not support the proposals submitted by Pakistan in document A/CONF.62/C.2/L.48: the disadvantaged States wanted justice, not charity.

16. The expression "geographically disadvantaged States" must be clearly defined. The definition contained in document A/CONF.62/C.2/L.35 was a good attempt.

The meeting rose at 3.55 p.m.

¹United Nations, *Treaty Series*, vol. 499, p. 312.

36th meeting

Monday, 12 August 1974, at 10.50 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Archipelagos

[Agenda item 16]

1. Mr. DJALAL (Indonesia) recalled that at the 42nd plenary meeting his delegation had described the concept of an archipelagic State as essential to the national unity, political stability, economic, social and cultural cohesiveness and territorial integrity of such States as Indonesia. Indonesia had always considered its land, waters and people to be inseparably linked to each other; the survival of the Indonesian nation depended on the unity of those three elements. Without the concept of an archipelagic State, most of Indonesia's waters would have become pockets of so-called "high seas", open to activities which might endanger the country's unity, security and territorial integrity. Indonesia had had unfortunate experiences in that regard. Furthermore, Indonesia's waters would have become a separating rather than a unifying factor, with an adverse effect on economic development.
2. Indonesia had proclaimed itself an archipelagic State on 13 December 1957. His delegation hoped that the Conference would support the concept of an archipelagic State; for their part, the archipelagic States were prepared to safeguard the legitimate interests of the international community.
3. The draft articles submitted by Fiji, Indonesia, Mauritius and the Philippines (A/CONF.62/C.2/L.49) were based on the proposals submitted previously to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction in document A/AC.138/SC.II/L.48 (A/9021 and Corr.1 and 3, vol. III, sect. 38). As could be seen from article 1, paragraph 1, the draft articles did not apply to situations other than that of an archipelagic State. The definition given in paragraph 2 of the same article was slightly different from that given in the articles submitted to the sea-bed Committee: the word "mainly" had been dropped and the words "and may include other islands" had been added. The intention was to emphasize that an archipelagic State must be totally detached from a continent and must consist wholly of islands. The article distinguished between an archipelagic State and an archipelago of a State. The words "including parts of islands" had been added in paragraph 3 to take into account the political and geographical realities of archipelagic States; the words "interconnecting waters" had been added to emphasize the unifying function of the waters, while the words "so closely interrelated" had been retained as a factor determining whether a group of islands might be considered an archipelago.
4. Article 2 constituted one of the basic elements of the concept of an archipelagic State since it ensured the archipelagic State's right to safeguard its national unity and territorial integrity. His delegation had already explained in the Committee its views on the relationship between the archipelagic State concept and the economic zone. Paragraph 2 of the article was designed to prevent the arbitrary drawing of baselines. The sponsors were reluctant to accept at that stage the idea of introducing a mathematical formula since that might result in arbitrariness and would defeat its own purpose. They did not, however, exclude the possibility of a mathematical approach.
5. Indonesia was aware of the needs of its immediate neighbours and assured them that in the spirit of co-operation which was being fostered in the region, notably through the Association of South-East Asian Nations (ASEAN), it would continue to seek a mutually acceptable accommodation of their inter-

ests. Certain understandings had already been reached as a result of bilateral and regional discussions. It was indeed in a spirit of goodwill that paragraph 5 had been inserted in article 2. His delegation was also aware of the possible problem of traditional fishing of immediately adjacent neighbouring countries in Indonesian waters; discussions on that topic had also begun.

6. Article 4 stipulated the obligations of the archipelagic State concerning respect for the right of innocent passage of foreign ships through archipelagic waters. The article had been redrafted to accommodate more adequately the interests of international navigation. His country was willing to support a convention recognizing normal commercial navigation through traditionally used channels in archipelagic waters.

7. Article 5 was basically the same as the original article. However, some drafting improvements had been made: for example, paragraph 6 now clearly determined the scope of the rights of the archipelagic State in enacting regulations relating to passage through archipelagic waters or sea lanes; the term "*inter alia*" had been dropped. The paragraph relating to the passage of warships had also been redrafted.

8. His delegation wished to stress that the draft articles were without prejudice to the established rules relating to deeply indented coastlines or to the fringe of islands along a coast, which fell under the régime for the territorial sea.

9. Mr. HARRY (Australia) commended the sponsors of document A/CONF.62/L.4 because they had pointed the way to articles that would form part of a comprehensive convention on the law of the sea. In the past Australia had drawn attention to the importance of the concept of archipelagic States, because it was itself surrounded by archipelagos. Indeed, his delegation's statement on the item under discussion would be made by a representative of the Government of Papua New Guinea—an archipelagic self-governing territory that was soon to become an independent State.

10. Mr. SIAGURU (Australia) said he was speaking as a representative of Australia because there was no other way for his emerging self-governing country, Papua New Guinea, to address the meeting.

11. The position of Papua New Guinea was different from that of the Cook Islands. Formal independence at the earliest practical date was the aim of the Governments of Papua New Guinea and Australia. It was his Government's firm intention that Papua New Guinea should emerge as a single united nation. But despite strong bonds of culture, outlook and economic interdependence, the geography of the island-State remained a potentially divisive influence. Papua New Guinea understood the problems and aspirations of its archipelagic neighbours because it shared those problems and aspirations. It was therefore encouraged by the support given to the archipelagic concept and saw in that concept a solution to many of its own difficulties. In seeking that solution, it was conscious of its responsibility to the international community to provide a degree of freedom of passage consistent with its problems of security, national unity and resource jurisdiction. The archipelagic solution was a good example of what could be achieved through the process of developing legal concepts to meet plain facts of geography and national identity.

12. In putting forward his country's claim to archipelagic status, he was aware that the principle of geographical expediency had other implications. He expressed sympathetic con-

cern for other developing countries for whom geography had created particular problems. The reasonable demands of all those countries must be met.

13. Mr. OGISO (Japan) said that Japan was prepared to give sympathetic consideration to the adoption of the archipelagic concept as part of the general régime for the new law of the sea. There seemed to be a growing awareness of the need to give some form of recognition to the special concerns of archipelagic countries. Since Japan itself consisted of a number of islands, it could understand those countries' wish to preserve their political, historical and geographical integrity.

14. His delegation believed, however, that the establishment of a régime of archipelagos should not result in the undue curtailment of the legitimate interests of other States or of the general interests of the international community. Those interests should be brought into harmony first, by providing an objective and reasonable definition of an archipelagic State; secondly, by safeguarding freedom of navigation for international maritime traffic; and, thirdly, by providing adequate protection of the existing navigational and other rights and interests of the countries in the region on which the recognition of the principle of archipelagos would have more direct and immediate bearing. His delegation attached great importance to those three points, and its final position depended on their acceptance.

15. The archipelagic concept should apply only to archipelagic States that were constituted wholly by one or more archipelagos. His delegation believed that it would be against the interests of the international community if, as a result of a vague definition of an archipelago, there was to be a proliferation of claims. There was therefore an obvious need for objective criteria. Such criteria could be of two dimensions: limitation in the form of a water/land ratio to be permitted within the archipelagic baselines, and limitation of the maximum permissible length of such baselines. That was the approach contained in document A/AC.138/SC.II/L.44 (*ibid.*, sect. 33). His delegation could support the proposal in that draft that the ratio of the area of the sea to that of land territory inside the perimeter should not exceed five to one. It could also support the proposal in the same draft that the archipelagic baseline should not exceed 48 nautical miles, although it was prepared to consider an extension of that length within a reasonable limit if the facts bore out the view of the archipelagic countries that a 48-mile limit would not be sufficient.

16. His delegation believed that freedom of navigation should be preserved as far as possible in the interests of the international community. It had noted with interest the statement by the Indonesian representative at the 42nd plenary meeting to the effect that Indonesia was willing to support a convention providing that normal commercial navigation through traditionally used channels in archipelagic waters should be unrestricted and fully recognized. The fact that some archipelagic waters were situated at the crossroads of vital inter-oceanic communications made it vital to provide for maximum free and unimpeded passage. The right of passage through such waters should certainly be more than the simple right of innocent passage. His delegation therefore believed that the right of transit passage by foreign vessels should be provided for in respect of archipelagic waters used as routes for international navigation, and the right of innocent passage by foreign vessels, including fishing vessels, should be ensured in other parts of archipelagic waters.

17. Application of the archipelagic principle would entail problems relating to the existing uses of the sea, particularly for countries in the same region. For example, it might have the effect of including in archipelagic waters some parts of the high seas which had been fished traditionally for many years. It might also affect existing submarine cables and pipelines, including those maintained by Japan singly or jointly with other countries of South-East Asia. His delegation had taken careful

note of the statement by the Indonesian delegation to the effect that Indonesia was prepared to discuss bilaterally with its neighbours the problem of the traditional interests claimed by neighbouring countries in archipelagic waters. Furthermore, it believed that the rights and interests of States relating to the existing uses of the sea in the areas enclosed by archipelagic baselines, including rights and interests pertaining to fishing and the laying and maintenance of submarine cables and pipelines, should be protected in the future convention.

18. In the light of those considerations, his delegation considered that the definition of an archipelago and the provisions concerning the régime of navigation and protection of existing uses of the sea contained in document A/CONF.62/L.4 were far from satisfactory. The four-Power proposal in document A/CONF.62/C.2/L.49 did not seem to reflect fully the concerns of his delegation. It hoped that they could be improved by informal consultations with countries directly concerned with archipelagic problems.

19. Mr. DUDGEON (United Kingdom) said that the archipelagic concept was one not recognized in existing international law. However, as the representative of Australia had said, it was the Conference's duty to develop concepts of international law which would take account of the realities of life. His delegation had therefore stated that it was willing to develop a concept of the archipelagic State with due regard to the needs and concerns of those countries which claimed archipelagic status. It had also said that an archipelagic State must be defined in accordance with objective criteria and that a satisfactory régime of navigation through archipelagic waters must be developed to cater to the needs of the international community. That was why his delegation had submitted a draft article on the rights and duties of archipelagic States (*ibid.*) to Sub-Committee II of the sea-bed Committee. Since the time of its submission, the principles embodied in the draft article had received many expressions of support. He therefore requested that when the officers of the Committee prepared an informal working paper on archipelagos, they should see that it reflected the provisions of that draft article as one of the main trends of opinion of the Conference.

20. His delegation had not yet had an opportunity to study fully document A/CONF.62/C.2/L.49, which had been ably introduced by the representative of Indonesia, and would accordingly reserve its comments until a later stage.

21. Mr. UZUNOV (Bulgaria) said his delegation supported the claim by the archipelagic States for the establishment of archipelagic waters with a territorial sea beyond them, and for sovereign rights over the waters together with their bed and resources. The delimitation of archipelagic waters should not however, lead to any excessive extension of the waters themselves or of the area of the territorial sea. A glance at the map and a careful analysis of the drafts submitted showed that the archipelagic States were trying to exploit their geographical position and were laying claim to broad expanses of archipelagic waters, territorial sea and economic zone. Consequently, the straight baseline method should not take into account drying reefs; the future convention must specify the limits for straight baselines enclosing archipelagic waters and serving as baselines for the measurements of territorial seas and economic zones. Freedom of passage for all types of vessels of all flags without discrimination must be preserved. That was not to say, of course, that vessels would have a right to roam at will in archipelagic waters. The archipelagic States would have the right to determine routes, and establish corridors, while vessels would be bound to observe the rules of passage. The principle of free passage through archipelagic waters did not affect the economic interests and security of the archipelagic States, and as a traditional principle it worked for the benefit of neighbouring and other countries. In view of the foregoing, his delegation could not agree with the contents of articles 4 and 5 of document A/CONF.62/C.2/L.49. The demand for freedom of

passage through archipelagic waters was completely legitimate, because those waters were extensive and most of them lay on important international routes.

22. His delegation maintained strictly that only true archipelagic States consisting of one or more archipelagos should have the right to establish archipelagic waters. The right should not be extended to coastal continental States with neighbouring islands or islets. Existing laws must not undergo fundamental changes that would confuse international marine law.

23. His delegation would be submitting specific proposals amending the document. The five main points of the amendment would be: a definition of an archipelagic State; the extent of archipelagic States' sovereignty; the obligations of archipelagic States to allow free passage through archipelagic straits and other areas of archipelagic waters; the obligations of vessels passing through archipelagic waters; the obligation of archipelagic States not to impede shipping.

24. His delegation felt that the question of establishing a category of archipelagic waters must be considered in conjunction with other issues of signal importance before the Conference.

25. Mr. RIPHAGEN (Netherlands) drew attention to the general tendency among States to round off their territory by including in the notion of internal waters such areas as lay between parts of the territory of one and the same State. That tendency to include the notion of archipelagic waters. That in the Territorial Sea and the Contiguous Zone.¹ Proposals before the Committee were now advocating the extension of that tendency to include the notion of archipelagic waters. That in itself was quite comprehensible. The drafters of the 1958 Convention seemed to have had uppermost in their minds the situation of continental States, the coastlines of which presented some peculiarities. Although articles 4, 7 and 13 could apply to the coastline of islands, the emphasis seemed to lie on the peculiarities of coastlines rather than on the special characteristics of particular States. It must however be borne in mind that international law was primarily a law between States and that island-States—States which consisted of islands or groups of islands only—also existed and for them the rounding off of territory must be viewed in a different context. In such States, there was no mainland to which islands were attracted but only the mutual attraction between a group of islands.

26. The Committee was dealing with human beings and with social, economic, historical and political realities. Some of those realities had in fact been reflected in the Convention, which, in article 4, paragraphs 2 and 4, attached relevance to whether the sea areas lying within the lines were sufficiently closely linked to the land domain and to economic interests peculiar to the region concerned, the importance of which were clearly evidenced by long usage. However, the fact that two or more islands or groups of islands together formed a State was of decisive importance in determining the status of the waters lying between the islands of the group. The distance between the islands and their importance for the population could not naturally be wholly overlooked, but those were factors which might influence the social cohesion of the group of islands, which was the relevant fact.

27. Normal routes of international navigation often led through waters lying between such islands and the concept of archipelagic waters should be no obstacle to their use. That idea was reflected in article 4, paragraph 5, and article 5, paragraph 2 of the 1958 Convention in respect of the application of the system of straight baselines. It was gratifying to note that the principle of respecting the interests of the world community in communications was thus generally accepted.

28. Mr. NANDAN (Fiji) said that his delegation, together with those of Indonesia, Mauritius and the Philippines, had

consistently reiterated their views and aspirations as to the status of archipelagic States in international law. That status had been seriously considered at the two earlier Conferences on the Law of the Sea, but the problem had not been resolved. It had been raised anew before the sea-bed Committee, which had agreed that the special status of archipelagic States should be recognized in the projected convention on the law of the sea.

29. His delegation was aware of the difficulties involved in giving effect to that status without infringing the legitimate interests of other States. In the document which had been submitted to the sea-bed Committee (A/9021 and Corr.1 and 3, vol. III, sect. 2), the four countries had sought to establish the fundamental principles applicable to an archipelagic State, including its rights over the waters within its baselines and the right of other States to innocent passage therein.

30. The general principles advanced had gained considerable support in the sea-bed Committee, which had asked for clarification on how they would be put into practice. Accordingly, draft articles had been submitted to the Committee by Fiji, Indonesia, Mauritius and the Philippines (*ibid.*, sect. 38) as a tentative basis for discussion.

31. The draft articles had stimulated debate, provided deeper insight into the problem and provoked some criticisms. As a result, the sponsors of the articles had revised them in document A/CONF.62/C.2/L.49 so as to reconcile the views of other States with the sponsors' basic objectives.

32. The sponsors had been criticized in the past for a lack of objectivity in formulating the rules for passage through archipelagic waters. In the revised draft articles, they had set out in greater detail the provisions on the right of innocent passage and on the extent to which archipelagic States could regulate such passage. They had endeavoured to define the considerations that must govern the archipelagic States' designation of sea lanes and prescription of traffic separation schemes. They had set limitations on their powers to make laws and regulations, and the measures they would adopt would be confined to certain specific areas, and would not conflict with the provisions of the convention or other applicable rules of international law.

33. The sponsors' aim was to impose minimum limitations on the innocent passage of foreign ships consistent with the need to confine particular classes or types of ships to special sea lanes in the interests of the archipelagic States' security. A delicate balance had to be struck to ensure minimum interference with the interests of maritime States and the necessary safeguards for the legitimate interests of transit States. The draft articles in document A/CONF.62/C.2/L.49 sought to reconcile those conflicting interests.

34. His delegation wished to dwell on three aspects of the document, namely, the composition of archipelagic States; the precise definition of an archipelago; and the effect of the draft articles on the concept of an economic zone.

35. An archipelagic State was defined as being constituted wholly by one or more archipelagos and other islands, where the interrelationship between land and water made them an intrinsic entity. That did not, however, exclude a State which, although composed of one or more archipelagos, also had under its sovereignty other geographically isolated islands. That was the case with Fiji, which consisted of one archipelago and three other islands situated at some distance from the main archipelago. Under the existing draft, such islands were not included within the baselines from which the territorial sea would be measured. The delegation of Fiji considered that those islands should have the same status as others, with their own territorial sea and, where applicable, their own economic zone.

36. In article 1, paragraph 3, the sponsors had attempted to clarify the definition of an archipelago by reference to the integral interrelationship between the islands, waters and other

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

natural features forming its intrinsic entity. They had been unable to arrive at a more precise mathematical formulation, which would inevitably be arbitrary. In their view, an archipelago was an archipelago if it met the criteria which they had established. No specific criteria had been established for coastal archipelagos.

37. The draft articles would have virtually no effect on the concept of an economic zone. If a 200-mile zone were measured outwards from the coasts of each island, the area of sea affected would be almost identical with that measured outwards from the archipelagic baselines. The only effective difference would be that the outer perimeter of the economic zone would be demarcated by straight lines rather than curves, whose exact location on charts would be harder to ascertain. The only exceptions would be where component islands were situated over 200 miles apart, which was not the case with the archipelagic States sponsoring the document.

38. Mr. FRASER (India) explained that India had over 1,280 islands and islets, of which approximately half constituted the archipelago of the Andaman and Nicobar Islands and that of the Lakshwadeep. India's other islands were located within its territorial waters or scattered through the Bay of Bengal and the Arabian Sea.

39. The archipelagic concept had been receiving increasing support, especially from the developing countries; at least 29 countries had spoken in favour of it in the plenary meetings of the Conference. Furthermore, no less than 11 countries had supported the idea that off-lying archipelagos constituted an integral part of the territory of the coastal State.

40. The concepts of archipelagos and of archipelagic States were closely linked; his delegation could view their implications sympathetically if the following considerations were borne in mind: first, that the body of water which was enclosed by drawing straight baselines joining the outermost points of the outermost islands constituting an archipelago should be reasonable; secondly, that the channels of navigation traditionally used by international shipping, where the right of free transit had hitherto been exercised, should be respected; and thirdly, that the principle should apply to the Andaman and Nicobar Islands and also to the Lakshwadeep Islands.

41. His delegation was pleased to state that those ideas were largely embodied in the comprehensive working paper contained in document A/CONF.62/L.4, of which his delegation was a sponsor. Articles 5 to 8 of that paper dealt with the concept of archipelagic States, and articles 9 to 11 with archipelagos that were regarded as forming part of a coastal State. The archipelagic State concept recognized the geographical, economic and political unity of the archipelagos constituting a single State; it also recognized the sovereignty of the archipelagic State over the waters enclosed therein, and ensured a régime of passage for international navigation. It acknowledged the right of a coastal State having archipelagos which formed an integral part of its territory to apply the principles applicable to archipelagic States, on the clear understanding that such principles would apply to those archipelagos only. Furthermore, such out-lying archipelagos could not be joined with the mainland of the coastal State by straight baselines.

42. If the provisions of document A/CONF.62/L.4 were adopted, international law would cover three types of archipelagos: those which constituted a fringe of islands along the coast of the State; those which constituted a single archipelagic State; and out-lying archipelagos which constituted an integral part of a coastal State.

43. The concept of the archipelagic State would not prejudice the existing régime of the coastal archipelago. Similarly, the application of the archipelagic principle to out-lying archipelagos of a coastal State would prejudice neither the established régime of the coastal archipelago nor the concept of the archipelagic State.

44. Mr. JEANNEL (France) said that his delegation's position on the question of archipelagos was well known. It sympathized with the concerns of those States whose territory was purely insular and it was in favour of a solution that would give greater cohesion to the different parts of such territories. Obviously, that could only be done if the sovereignty of the State over the islands was recognized in a non-discriminatory manner.

45. Some proposals, contrary to existing international law, were aimed at establishing a distinction between the sovereignty exercised by the State over islands and that exercised over parts of a continent. Such an approach would be a legal monstrosity because it would lead to a division of the sovereignty of the State. It would also be thoroughly objectionable from another point of view: it would threaten the sovereignty of some States while extending that of others over large portions of the sea. The arbitrariness of such a distinction was obvious; it was quite without any legal basis and would only heighten certain geographical inequalities.

46. Having ruled out proposals of that kind, his delegation would consider a special régime for archipelagos, providing that it did not unduly hinder freedom of sea and air navigation in the vast spaces included in the archipelagos. Of course, the régime should be applicable to all archipelagos, whatever their type and location, because their problems were similar.

47. His remarks regarding the indivisibility of the sovereignty of the State should not be interpreted as leading to the establishment of rules regarding delimitation of ocean space between neighbouring or opposite States. That was a different problem, and it should be dealt with separately.

48. Mr. HERRERA CACERES (Honduras) said that although the term "archipelago" lacked a precise legal meaning, it was used to refer to a group of islands, and logically, that meant more than two islands. He was not referring to archipelagos situated in historic waters but to groups of islands located in the open sea and governed by the general rules of international law.

49. A distinction should be made between oceanic and coastal archipelagos. The former were those situated in mid-ocean at a considerable distance from land, whereas the latter were situated in the immediate vicinity of the land and closely linked with it, forming a homogeneous geographical whole. His statement would be limited to the latter type.

50. Honduras's archipelago Islas de la Bahía was a Department of his country with close geographical and economic dependence on the mainland. Its nearest island was 20 miles from shore and the distance between the islands, not counting intermediate cays and shoals, did not exceed 16 miles. Honduras had taken into account its geographical, political and economic unity with the mainland by giving it the highest legal status; in the light of that fact, in the area where the archipelago was located, the baseline of Honduras's territorial sea, which for most of the Atlantic coast followed the low-water line, was drawn to join the mainland with the appropriate points on the islands. The waters within those baselines were therefore internal waters.

51. His delegation believed that the provision of article 5 of the Geneva Convention on the Territorial Sea and the Contiguous Zone—a Convention which was not binding on Honduras—regarding the right of innocent passage in areas enclosed as internal waters, was legally unacceptable and it disregarded a number of important factors. The second revision of Informal Working Paper No. 1 included that same provision as a main trend and was therefore legally unacceptable to his delegation.

52. First, it was necessary to make a distinction. In areas which had formerly been part of the high seas and had then become territorial waters, the right of innocent passage in the traditional sense of navigation through the territorial sea to the

territorial sea of another State or to the high seas was fully justified. In areas which had been part of the territorial sea and had been enclosed as internal waters, however, no such right existed. By international custom the right of innocent passage applied solely with respect to territorial waters, whereas access to internal waters was always subject to the authorization of the coastal State.

53. Secondly, coastal archipelagos varied in character from the point of view of maritime communications. Maritime areas generally used for international navigation and maritime areas used mainly as an access route to the mainland and as a necessary medium of communication between a coastal archipelago and the mainland on which it depended, were quite different and they could not be considered juridically as equivalents. That question had been discussed during the 1930 Hague Conference for the Codification of International Law, where a number of delegations had maintained that the right of passage which foreign ships might enjoy in such waters would have to be subject to different conditions and be of a different character from the traditional right of innocent passage through the territorial sea.

54. The question had come up again at the 1958 Geneva Conference on the Law of the Sea, where a number of delegations had felt that the meaning of "innocent passage" should not be distorted by applying it to an area which was not territorial sea, but to internal waters where no such right existed. Other delegations had maintained that a distinction based on whether or not the waters were habitually used for international navigation would be impractical and would only lead to confusion. In the end, an amendment to that effect had been adopted by the Conference by 24 votes to 14, with 23 abstentions.

55. Honduras believed that that provision was *res inter alios acta*, and that it tended in its existing form to distort the basic difference between two areas of the sea which, although both integral parts of the territory of the coastal State, had traditionally been distinguished by the fact that the right of innocent passage did not exist in one of them. If there had to be innocent passage through those waters, due respect should be given to the sovereignty of the coastal State over that part of its maritime territory, which was even more closely linked to its interests and needs than the territorial sea.

56. His country did not object to allowing and regulating the passage of merchant vessels through such waters, which had traditionally been used for international navigation. However, military, government and research vessels should navigate in those waters only with the prior authorization of the coastal State.

57. Mr. TOLENTINO (Philippines) said that as early as 1955 the Philippines had submitted a position paper which stated that all waters around, between and connecting the different islands of the Philippine Archipelago, irrespective of their width or dimension, were necessary appurtenances of its land territory, forming an integral part of the national or inland waters, subject to the exclusive sovereignty of the Philippines. His delegation had advanced that position at the previous Conferences on the Law of the Sea, under the principle of historic waters. Because it had not been adopted at the 1960 Conference, and for other reasons, the Philippines had refused to sign the four 1958 Geneva Conventions. It had been suggested at the 1958 Conference that frequently the only rational and practical solution was 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, i.e., from the outermost points of the constituent islands, islets and rocks. Following that suggestion, the Philippine Congress had approved a law in 1961 defining and describing such baselines. His delegation therefore joined in proposing that the Conference include articles on the régime of archipelagos in a comprehensive convention on the law of the sea.

58. Some delegations in the sea-bed Committee and at the Conference had expressed sympathy for or support of the concept of archipelagos. On the other hand, other delegations had voiced concern and raised questions on the content and details of that concept. The draft articles in document A/CONF.62/C.2/L.49 took into account some of the observations that had been made by delegations since the original draft articles had been tabled in the sea-bed Committee.

59. First, those articles applied only to outlying or oceanic archipelagic States, no part of which State was on a continent or mainland, and which had its own independent Government.

60. Secondly, although an archipelagic State might include other islands which did not geographically form an integral part of the archipelago of such State, the drawing of baselines by that State was limited only to the archipelago proper. Those baselines were not to be extended to the other islands, and the waters between the archipelago proper and the other islands would not be archipelagic waters.

61. Thirdly, although the archipelagic State might restrict innocent passage of foreign ships through the archipelagic waters to the sea lanes designated by it, if it did not establish such sea lanes, then the entire archipelagic waters would be open to innocent passage of foreign ships.

62. Fourthly, in designating sea lanes, the archipelagic State must take into account the recommendations or technical advice of competent international organizations, the channels customarily used for international navigation and the special features of particular channels and ships.

63. Fifthly, the authority of the archipelagic State to make laws and regulations relating to the passage of foreign ships through the archipelagic waters was subject to two important limitations: such laws and regulations must not be inconsistent with the provisions of the draft articles in document A/CONF.62/C.2/L.49 and must have due regard to other applicable rules of international law; such laws and regulations could not go beyond the subjects listed in paragraph 6 of article 5, thereby preventing the possibility of surprise to the maritime community.

64. Those features of the draft articles indicated the willingness and flexibility of the sponsors to consider views of other delegations in an attempt to reach reasonable mutual accommodation. There were other matters such as the definition of archipelagos, the establishment of land water ratio and the fixing of maximum length of baselines on which the sponsors were willing to negotiate.

65. His delegation would consider any reasonable proposal for the régime of archipelagos as long as the essence of the archipelagic concept was maintained. That essence was the dominion and sovereignty of the archipelagic State within its baselines, which were so drawn as to preserve the territorial integrity of the archipelago by the inseparable unity of the land and water domain. The preservation of that essence of the archipelagic concept was vital to the Philippines and formed part of its basic national policy.

66. The waters around, between and connecting the different islands of the Philippine Archipelago had always been highways of communication between the islands and had brought the people together under one nation and one sovereign State. Those waters were small in comparison to those of, say, Hudson Bay which one State now claimed as part of its national waters under historic title. Their protection from intrusion was therefore vital to the national security of the Philippines. His delegation would therefore find it impossible to agree to qualifications of the archipelagic concept that would subvert the sovereignty of the archipelagic State within the baselines or make that concept itself meaningless. While various proposals before the Conference would create new rights and benefits that had never been asserted and had never been enjoyed, the proposals regarding archipelagos would simply

give international recognition to an existing right long asserted, exercised and enjoyed.

67. Unlike the 1958 Conference, which had worked on the basis of an almost entirely juristic draft prepared by the International Law Commission,² the current Conference was engaged in the more difficult task of reconciling divergent positions and proposals dictated largely by respective national interests. The Conference was not intended to lay down purely academic formulae but to agree on solutions based on the facts of national and international life.

68. Mr. PANUPONG (Thailand) said that the question of archipelagos was of special importance to his country which was situated in an area of semi-enclosed sea, with two major archipelagic States as its close neighbours and a number of archipelagos or groups of islands and islets in the seas of the South-East Asian region in which Thailand was situated.

69. While his delegation was anxious to see the general question of archipelagos settled and the concept translated into a rule of law in the new convention on the law of the sea, it wished to have the issue of archipelagic States treated separately from that of archipelagos which did not have the status of a State.

70. There were basic differences between the concept of archipelagic States and that of non-State archipelagos. First, the elements justifying the concept of archipelagic States such as the Philippines and Indonesia were not only geographical but also political, economic and historical, whereas the concept of an archipelago was purely geographical and topographical. Secondly, the status of the archipelagic waters enclosed by the baselines was *sui generis* and applied specifically to the case of archipelagic States; it was not to be confused with the insular waters of non-State archipelagos.

71. His Government was favourable to the principle of archipelagic States in general, but maintained that the legitimate interests of neighbouring countries which were affected by the application of the new concept in international law should be considered and accommodated.

72. The application of the new concept, as originally introduced in the proposal submitted by Fiji, Indonesia, Mauritius and the Philippines (*ibid.*), would create a situation affecting neighbouring countries, such as Thailand, which were enclosed by waters of archipelagic States. First, there was the problem of communication and access to the open ocean space. The proposals for international navigation did indeed provide for innocent passage through designated sea lanes. On the other hand, the enclosed countries needed passage through the waters of archipelagic States, not only to engage in international navigation or trade, but to enable them to reach the open sea for other purposes as well, or to communicate with other parts of their territories. Their need for unsuspendable innocent passage was therefore more imperative, and the passage might require other routes in addition to sea lanes designated primarily for international navigation. Secondly, account had to be taken of the interests of those enclosed countries in the living resources of the areas regarded in international law as part of the high seas. His delegation's position was that where archipelagic waters or territorial waters extended to such areas as a result of the application of the concept, the interests and needs of the immediate neighbours of the archipelagic States had to be recognized. In view of the complicated nature of the fisheries question and of other problems peculiar to each region, the modalities of access to the living resources in those areas should be agreed upon between the countries concerned within the framework of regional or, if necessary, bilateral arrangements.

73. Owing to its special geographical position and to its substantial economic dependence on the living resources of the

sea, Thailand had no alternative but to stand firm on its position that the recognition of those two aspects of the interests of its immediate archipelagic neighbours must have a place in the provisions of the convention.

74. In his delegation's view the best course would be a mutual accommodation by way of a formula taking into account the interests and rights of both the archipelagic States and their immediate neighbours. Rather than being purely a case of diplomatic accommodation on specific issues between States, it was in fact a case of mutual accommodation in legal principles between rights and interests as recognized by *lex lata* and rights as proposed by *lex ferenda*, i.e., an accommodation which should not result in establishing new rights for one State in such a manner as to eradicate or suppress altogether the legitimate and indispensable interests of others.

75. His delegation thought that any divergence of views was less a question of general principles than of adjustment to each other's interests. It wished at the same time to place on record that it reserved the right to submit its draft articles if and when the circumstances so required.

76. Mr. STEWART (Bahamas) said that his delegation, as expressed by its Minister for Foreign Affairs at the 32nd plenary meeting, hoped that the Conference would arrive at the formulation of internationally acceptable norms for the determination of criteria for the drawing of baselines befitting peculiar and unique circumstances. The Bahamas was a unique case which had long been regarded as a geological enigma. The islands comprised a realm of predominantly shallow waters which were largely non-navigable except by vessels of the shallowest draught.

77. The Bahama Banks presented a special problem of delimitation since both the ratio of very shallow water to dry-land areas and the steepness of the slopes appeared to be unparalleled. If those unique physio-geographic conditions were disregarded and conventional baselines at the low-water level used, bizarre effects would result.

78. The Bahamas claimed the areas of the Bahama Banks with uncharacteristic modesty since the Bahamas, to Bahamians, meant more than just the islands and the cays, but included both the Great and Little Bahama Banks. Those areas of shallow water had historically been regarded as parts of the territory of the Bahamas: a grant, encompassing the banks as well as the islands and the cays, had been made to the Lord Proprietors by King Charles of England in 1670.

79. It had been suggested that archipelagic States, in drawing baselines, should fulfil certain criteria including the formula of maximum length of baselines. The length-of-baseline criteria became irrelevant when applied to the unique circumstances of the Bahama Islands and Banks and was therefore unacceptable to his delegation. Nor could his delegation accept a system which divided its nation into several archipelagos since it wished to preserve the political and psychological unity of the Bahamian people.

80. His delegation could accept a system which allowed the drawing of the baseline to and from low-tide elevations, light-houses and other natural features of the political entity irrespective of the length of such baselines.

81. The Bahamian people, being modest and reasonable, had no intention of interfering with the freedom of navigation through the several straits which traversed their archipelago. Living on the pivot of the Caribbean and the Americas and in keeping with their declared policy of friendship and good neighbourliness toward all nations, the people of the Bahamas sought a solution that would protect their vital interests while accommodating the legitimate interests of the international community and safeguarding those of their neighbours.

82. His delegation hoped that all participants of the Conference would be equally reasonable.

The meeting rose at 12.55 p.m.

²See *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, para. 33.

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 Zone² 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

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. Notwith-

standing 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 I 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 ambiguity 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 provi-

sion 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 to the latter was kind enough to 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-à-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

A/AC.138/52, 56 and 58¹ submitted to the sea-bed Committee in 1971 and to the list of subjects and issues in document A/AC.138/66² submitted to the Committee in 1972. This indicated that there was a wide and long-standing acceptance of the proposition that in any comprehensive examination of the law of the sea, special treatment must be reserved for enclosed and semi-enclosed seas of international interest, and that what might be appropriate and necessary for the wide ocean spaces would not automatically apply in those geographically distinct marine areas.

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

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

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

13. Notwithstanding the widespread concern about enclosed and semi-enclosed seas, the reports of the sea-bed Committee, particularly volumes IV, V and VI of its 1973 report (A/9021 and Corr.1 and 3), did not include proposals relating to that item in Working Paper No. 4 of the Working Group of Sub-Committee II or in the consolidated texts prepared by the Sub-Committee in 1973. Yet the topic had been mentioned (*ibid.*, vol. III, sect. 3) later replaced by document A/CONF.62/C.2/L.8, on the breadth of the territorial sea in semi-enclosed areas;

in documents A/CONF.62/C.2/L.14 and 33, dealing with delimitation problems in that type of sea area; in document A/CONF.62/C.2/L.20, dealing with certain aspects of ingress into and egress from such seas; and in documents A/AC.138/SC.II/L.24 and 27 (*ibid.*, sects. 13 and 16) concerning the 200-mile territorial sea. His delegation formally requested that those proposals should appear in the informal working paper on item 17, not only to repair the omission in the report of the sea-bed Committee but also to make it plain that a major trend existed in that Committee and in the Conference which recognized that enclosed and semi-enclosed seas presented special problems. His delegation also considered that appropriate substantive provisions, or a general savings clause or reservation, should be included in the future convention.

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

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

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

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

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

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

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

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

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

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

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

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

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

24. His delegation therefore concluded that the convention would, in all essentials, take as its point of departure those problems of the law of the sea which were common to the oceans. The convention could not reasonably be expected to solve also the question of the various enclosed and semi-enclosed seas. In drawing up the convention, however, the

Conference should provide for exceptions to be made from its general provisions in all instances where the particular characteristics of enclosed or semi-enclosed seas warranted particular solutions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39. The establishment of regional arrangements was essential to ensure the implementation of a joint policy for the conservation and management of living resources, pollution prevention and control, the conduct of marine research, and the settlement of disputes. All coastal States should have equal rights in the

exploitation of marine living resources. Nevertheless, regional arrangements should not be considered a substitute for the provisions for the settlement of disputes in the proposed convention. The convention should embody principles regulating the legitimate uses of semi-enclosed seas and the rights of coastal States. The Arabian Gulf was a special area where broad regional co-operation was necessary. Such co-operation would be possible only if all States within the area refrained from unilateral action.

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

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

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

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

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

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

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

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

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

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

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

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

51. The point at issue was not a régime for enclosed seas, but the possibility of taking a regional approach to certain questions in specific marine areas where the application of certain provisions of international marine law by one coastal State might affect the rights and interests of other States. His coun-

try's position was that in those specific areas regional decisions on questions of sea law could be taken only within the framework of the international convention to be adopted by the Conference. Specific solutions to problems must be arrived at by agreement between the coastal States concerned, without prejudice to the legitimate interests of other countries of the world.

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

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

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

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

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

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

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

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

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

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

Artificial islands and installations

[Agenda item 18]

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

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

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

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

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

66. The second problem involved in the construction of artificial islands was more delicate. It might prejudice various uses of the sea by other countries, by impeding international navigation, causing sandbanks to form or blocking access to a neighbouring country's ports. Such adverse effects would be specially marked in narrow or shallow waters. Article 5, paragraphs 5 and 6, of the Geneva Convention on the Continental Shelf³ placed formal limits on the coastal State's freedom of action. The appearance of numerous artificial islands in narrow or shallow waters would be harmful to the marine environment, to fisheries and to other uses of the sea.

67. No special provisions were needed for artificial islands subject to the jurisdiction of the Sea-Bed Authority, since their

distance from the coast would preclude their causing serious damage.

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

Régime of islands

[Agenda item 19]

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

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

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

⁴*Ibid.*, vol. 516, p. 206.

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

71. Those were the considerations on which the first four paragraphs of part A of the draft were based. An island was defined in the same terms as in the Convention on the Territorial Sea and the Contiguous Zone, and it was stated that an island had a territorial sea, an economic zone and a continental shelf on the same basis as any other land territory. The sponsors of the draft were aware that some representatives, who might accept the logic of that approach, would nevertheless be inclined to challenge the provisions on the grounds that allocating a full quota of ocean space to islands would produce inequitable results. Such delegations should, however, consider whether it would be reasonable to legislate for the benefit of the 80 per cent of independent countries which did not constitute island States at the expense of the 20 per cent which did;

whether depriving a very small mid-ocean island State of control over the fisheries resources in the 200-mile sea around it would be to the benefit of the international community as a whole or to the benefit of a few distant-water fishing countries; and, if a punitive rule should apply to a mid-ocean island State with limited land resources, located very far from the markets for its exports, what corresponding punitive rule should apply to a large continental country with rich land resources and access to an extensive area of sea and sea-bed and its considerable resources. His delegation had given careful consideration to the question whether the ocean space of certain categories of islands could be restricted in such a way as to do justice to all. If that were possible, mid-ocean island States should be the last category to be subject to such restriction.

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

The meeting rose at 1 p.m.

39th meeting

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

Chairman: Mr. Andrés AGUILAR (Venezuela).

Régime of islands (*continued*)

[*Agenda item 19*]

1. Mr. KIAER (Denmark) said that the Geneva Conventions of 1958 contained two articles of special importance for the question of islands, namely article 10 of the Convention on the Territorial Sea and the Contiguous Zone¹ and article 1 (b) of the Convention on the Continental Shelf.² His delegation was glad to see that the principles embodied in those articles were faithfully reflected in paragraphs 1, 2 and 3 of document A/CONF.62/C.2/L.30, for the following reasons.
2. If an island was an independent State, it should not be in a less favourable position than a continental State, and, if an island had not yet achieved its independence, it should be accorded the same treatment as other islands in order not to prejudice its rights when it became independent.
3. Furthermore, the special economic and social characteristics of islands must be taken into account because their populations were frequently isolated and had few alternative employment opportunities. Accordingly, at least the same rights should be granted to islands as to continental territories.
4. The delimitation of island ocean space or sea-bed area in the case of adjacent or opposite States should continue to be based, generally speaking, on the clear-cut equidistance principle. His delegation therefore supported the provisions on that subject contained in documents A/CONF.62/C.2/L.25 and 31.
5. If the Conference decided to grant coastal States extensive rights in the form of broad exclusive economic zones, then

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

6. Mr. RABAZA (Cuba) said that the Fourth Conference of Heads of State or Government of Non-Aligned Countries, held at Algiers in September 1973, had noted the resolution approved by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in August 1973³ reaffirming the inalienable right of the Puerto Rican people to self-determination and independence, in accordance with United Nations General Assembly resolution 1514 (XV), and had adopted a resolution calling upon the United States Government to desist from any measures that might prevent the Puerto Rican people from exercising freely and fully their inalienable right to self-determination and independence, as well as their economic and social rights. The resolution particularly urged that there should be no violation of those rights by corporate bodies under United States jurisdiction. Moreover, it called upon the Committee on decolonization and other competent bodies to accelerate and intensify measures designed

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

² *Ibid.*, vol. 499, p. 3.

³ *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 23*, chap. I, para. 84.

to assist the people of Puerto Rico in attaining its sovereignty and independence, and in recovering its national heritage.

7. The Organization of African Unity had always concerned itself with the position of countries under colonial domination. The relevant proposals had been contained in its Declaration on the issues on the law of the sea (A/CONF.62/33), proclaimed at Addis Ababa in 1973 and reaffirmed at Mogadiscio in 1974, under which the right of coastal States to establish an exclusive economic zone of 200 miles, in which they would exercise permanent sovereignty over all the living and non-living resources of the sea, was recognized. That in no way implied, however, a recognition of the rights of territories under colonial, foreign or racist domination. The document on the economic zone recently submitted by a group of socialist countries (A/CONF.62/C.2/L.38) also referred to that problem. Furthermore, the draft articles submitted by Jamaica (A/CONF.62/C.2/L.36) excluded associated States, self-governing territories and territories under foreign domination from enjoying rights in the economic zone other than those to be conferred on the inhabitants of such territories for the purpose of their domestic needs. The existing situation would naturally disappear when the territories concerned had attained full independence.

8. The delegation of the United States had circulated charts illustrating the catastrophic pollution originating in highly developed countries that was borne by marine currents to contaminate developing countries. One chart showed a dramatic division of the ocean into lots, which allocated, intentionally or inadvertently, the 200-mile economic zone of Puerto Rico to the United States. The Conference of Non-Aligned Countries had urged restoration of the national heritage of that island, which, after 76 years, had not assimilated the "American way of life". In fact, nobody ever believed that Puerto Rico was free or associated, nor did the States which approved the report of the Committee on decolonization by an overwhelming majority in the United Nations General Assembly.

9. The States represented at the Conference on the Law of the Sea should, as an honourable compromise, oppose the flagrant despoliation of that island's rich resources in the sea-bed and its subsoil pending its attainment of full independence.

10. His delegation wished to refer to the draft article proposed by Mexico (A/CONF.62/C.2/L.42), which provided that no State could construct or erect military installations or appliances on the continental shelf of another State without the latter's consent.

11. The United States Government, flouting the will of the revolutionary Government and people of Cuba, maintained the naval base of Guantánamo, like a dagger threatening the country's sovereignty. The United States also controlled both shores of the bay and a rectangle of water extending to a distance of 3 miles into the high seas, which was currently the breadth of Cuba's territorial sea. The usurped areas were an inalienable part of Cuba, over which it would never renounce its claim to sovereignty.

12. The draft article submitted by Mexico met the requirements of a coastal State for the exercise of its sovereignty over the continental shelf. Nevertheless, it would be necessary similarly to safeguard the interests of States whose land or sea areas were wholly or partially under foreign occupation, and to prohibit the emplacement of military installations and appliances thereon.

13. Mr. GORI (Colombia) said that, according to the evidence before the Committee so far, an island was a separate entity, with its own régime, but was at the same time a component part of another entity called an archipelago. In turn, an archipelago was also a separate entity, which could or should have its own régime, and was at the same time a component of another separate entity—the archipelagic State.

14. On the previous day the trend had been to recognize the archipelagic State as a new entity with its own independent characteristics, and to create a special régime of privileges and duties for it. At the same time there had been a tendency to disregard the archipelago, whether coastal or outlying, as a separate entity and to deny it a separate régime. In the opinion of some representatives islands did not cease to be islands even if they constituted a group and had links which made them a definite unit, unless they were the seat of a Government. His delegation agreed that the law of the sea should recognize the new concept of archipelagic States and accord them a special status. On the other hand, even if it admitted the existence of such States his delegation could not agree to the disappearance of the entity known as "an archipelago"; that would be contradictory, since the concept of an archipelagic State was based on that of an archipelago. Since an archipelagic State claimed a special régime, by the same token a coastal State which exercised sovereignty over one or more archipelagos could claim an equivalent régime for those archipelagos. That was the position his delegation would maintain.

15. On the question of islands, the Committee had before it only the same definition as that given in the Geneva Convention on the Territorial Sea and the Contiguous Zone, which was a broad and generic definition embracing such clearly different land formations as islands, islets, keys, reefs, etc.

16. What purpose could such a definition serve in terms of the law of the sea? In other words what significance did such a definition, ranging from an island State to a rocky headland, possess? Could all those formations conceivably be granted the same maritime space, and to the same extent, as appeared to be claimed for them?

17. Even at the Geneva Conference the comment had been made that by that reasoning a tiny island no larger than a pin-head, close to the African coast, could annex a large part of the Atlantic as its continental shelf. Logically, and in geographical terms, it would mean that any minor elevation could call itself an island. That trend of thinking, dating back to the Geneva Conference, was reflected in a number of the proposals submitted, for example, that put forward by the United Republic of Cameroon, Kenya, Madagascar, Tunisia and Turkey in document A/AC.138/SC.II/L.43 (A/9021 and Corr.1 and 3, vol. III, sect. 32). There might perhaps be a case for establishing an organ to examine and evaluate the various "island" situations and decide how they should be treated, the logical criterion being to assign maritime space on the basis of absolute equity.

18. The choice was either to accept that criterion or to amend radically the Geneva definition; in other words either to define what was meant by "island", in the context of the convention, or to create specific categories of islands, which could be accorded appropriate maritime space. In any case, the new law of the sea should dispel the uncertainty bequeathed by the Geneva definition.

19. There was another point which required clarification: since the concept of "special circumstances" had been introduced, the presence of an island in the maritime area to be delimited had always been cited as an example of "special circumstances". In principle, the presence of an island was a typical case of special circumstances, which could affect the application of the equidistance principle. However, the existing Conventions shed no light on the question. His delegation thought that the question should be clarified, and concrete guidance be given as to the potential effects of a "special circumstance", after it had been properly recognized as such.

20. A detailed study of those points could lead to a concrete formulation of what was apparently already accepted State practice: treatment of an island as a separate entity having important functions, which must fulfil certain specific requirements. The island, as a component part of other entities, was or could be a less demanding concept. Thus, an archipelago

which, according to texts proposed and under discussion, was composed of islands could, in fact, consist of islands properly so-called; however, it might also consist of other land formations such as islets, keys, or even reefs, provided they fulfilled conditions which made them economically active and politically cohesive so that they could be regarded intrinsically as a unit.

21. In the light of those considerations, the existing Geneva definition of islands should be clarified and refined. His delegation reserved the right to revert to some of the points raised, should the occasion arise.

22. Mr. SLADE (Western Samoa) said that his delegation fully endorsed the explanations given by the representative of New Zealand when introducing document A/CONF.62/C.2/L.30 at the preceding meeting.

23. In one sense, that document was not innovative: its basic provisions were inspired by article I of the Convention on the Continental Shelf and article 10 of the Convention on the Territorial Sea and the Contiguous Zone. The same was not true of part B, in which for the first time a fair solution was provided for the special problems of those territories which had not yet attained full independence. His delegation considered that the resources in the economic zones of such territories must be preserved and was therefore heartened to see that part B of the document had been reflected as a main trend in Informal Working Paper No. 4.

24. The four sponsors of document A/CONF.62/C.2/L.30 were all States situated in the South Pacific, and their proposal reflected the problems and concerns characteristic of the region, as well as their ideas concerning the régime of islands in general. They had attempted to deal with the subject in a way which would not prejudice the interests of neighbouring countries. They were aware of the opposition expressed by some delegations to the idea of allocating a full area of ocean space to all islands, but they were anxious to avoid the inequities that could arise from a categorical delimitation of ocean space without due regard for the peculiar features and circumstances of oceanic islands. He wished to endorse the lucid arguments on that point presented by the representative of New Zealand.

25. Western Samoa was an island State in the South Pacific and comprised 10 separate islands, all of which were situated within its territorial limits. It therefore foresaw no great difficulties in its own case in respect of the allocation of ocean space. However, it sincerely believed that there were certain special factors that required careful consideration before any arbitrarily exclusive rule was introduced.

26. His delegation had already explained at the 25th plenary meeting and at the 24th meeting of the Second Committee why Western Samoa was so heavily dependent on the surrounding sea and its resources. It followed that his delegation fully supported articles 2 and 3 of document A/CONF.62/C.2/L.30, which provided that the territorial sea and economic zone of an island should be measured and determined in accordance with the provisions applicable to other land territory. For an island State such as his own, a rule of that kind was essential and must be included in the future convention. His delegation had therefore been reassured by the statements of a number of delegations to the effect that they did not think such a rule should present any difficulties.

27. The provisions in the document had no bearing on islands making up an archipelagic State, on archipelagos lying off a coastal State or on a fringe of islands in the immediate vicinity of a coast.

28. His delegation had sponsored the document partly out of a desire to focus attention on the régime of islands, but more especially to highlight the circumstances and expectations of an island State in the South Pacific. It was only by discussing and understanding the aspirations and interests of all nations and

regions that the Conference could hope to achieve a successful conclusion.

29. Mr. SAULESCU (Romania) said that the question of islands had to be considered within the new parameters of the enlarged 12-mile territorial sea, the 200-mile economic zone, and the concept of the common heritage of mankind. The régime established for islands would be a contributing factor in determining the extent of the international area in which coastal and land-locked States had an equal interest. The tremendous diversity among islands with regard to size, geographical situation, and economic and social importance gave some idea of the complexity of the problem for which generalized solutions along the lines of those adopted at the 1958 Geneva Conference would no longer be adequate.

30. The practice of States, customary law, and international legal theory demonstrated widespread agreement on the need to distinguish clearly between islets and rocks on the one hand and islands proper on the other. Subjecting all types of islands to a single régime would produce unjust and inequitable results. Thus it was only natural that the Conference should establish a separate régime for the islets category and his delegation had prepared appropriate draft articles for that purpose in document A/CONF.62/C.2/L.53, which he was now introducing.

31. With regard to the definitions in article I of the draft, the two criteria of area and economic and social viability should suffice to exclude certain elevations of land from the category of island. However his delegation was receptive to any other criteria which might be proposed.

32. The main purpose of articles 2 and 3 setting out the principal elements of a régime applicable to islets was to prevent any State from encroaching upon the marine zones of another State or the international area by invoking the existence of islets or islands similar to islets in one of its marine zones.

33. With regard to islets in close proximity to the coastal State to which they belonged, the solution proposed by his delegation was not new and had already been reflected in various texts proposed during consideration of the item on the territorial sea. His delegation considered that if such elevations of land were to be included within the baselines of the coastal State, they should be linked in some way with the continent or main territory and be situated in close proximity to the coast. Islets which were situated within the territorial sea of the main territory were already sufficiently protected by the fact that they were surrounded by waters under the complete sovereignty of the coastal State, and supplementary provisions were not necessary. In the case of islets situated near the outer limit of the territorial sea of the coastal State, the latter could extend its territorial waters seaward or establish an additional marine zone for the protection of lighthouses or other installations on condition that such action did not affect the marine space of neighbouring States.

34. With regard to islets situated beyond the territorial sea, on the continental shelf or in the economic zone of the same State, they were obviously not entitled to continental shelves or economic zones of their own. However his delegation's draft articles provided the coastal State with the possibility of establishing security zones or even a territorial sea in so far as that was not prejudicial to the marine spaces of other States. For islets situated near the outer limit of the continental shelf or the economic zone, his delegation proposed that the breadth of the security zone or territorial waters of such islets be established by agreement with neighbouring States or between the coastal State and the International Sea-Bed Authority to be entrusted with managing the international area.

35. The marine space of islets situated within the territorial sea or economic zone or on part of the continental shelf of another State should be determined by agreement between the

States concerned or by any other method of peaceful settlement used in international practice.

36. The inclusion of such provisions in the future convention would facilitate the resolution of the numerous and complex problems which arose in practice, especially with regard to the delimitation of marine space between neighbouring States.

37. Mr. TUPOU (Tonga) said that, as an island State consisting of 150 islands in the South Pacific, Tonga attached great importance to the item under consideration. His delegation was grateful for the assurances given by some delegations that the island States would be entitled to the same area of ocean space as continental territories on the principle of State sovereignty. However, he wished to emphasize that, in accordance with the principle of indivisibility of State sovereignty, all islands comprising the State must be treated alike and should have the same ocean space as other territories.

38. His delegation had already made reference to document A/CONF.62/C.2/L.30—of which it was a sponsor—at the 24th meeting during the debate on the exclusive economic zone. However, there were two points that he wished to emphasize.

39. The sponsors of the document had deemed it appropriate to make part B applicable to land territory as well as to insular territory. He pointed out that a number of islands in the Pacific Ocean had not yet attained full independence. The needs of the people in such territories for ocean space and resources were just as acute as the needs experienced by the populations in fully-fledged States. Provided therefore that the resources of their ocean spaces were used solely for the benefit of their peoples and were not taken away by the metropolitan Power, his delegation saw no reason why such territories should not have the same area of ocean space as that accorded to States. That approach did not, he believed, conflict with the relevant principle in the Declaration of the Organization of African Unity or with article XI of the document submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction by 14 African States (*ibid.*, sect. 29).

40. Part A of document A/CONF.62/C.2/L.30 constituted a natural extension of the 1958 Conventions on the Territorial Sea and the Contiguous Zone and on the Continental Shelf.

41. A small mid-ocean island State, such as Tonga, with little land territory and few resources, would consider inequitable any arrangement whereby islands were not given the same economic zones as continental territories. The 1958 Conventions had recognized the right of islands to receive the same treatment as continental land masses in respect of ocean space. He therefore wished to commend to the Committee the paragraphs in part A of the document, which were intended to be without prejudice to the question of delimitation.

42. Mr. BALLAH (Trinidad and Tobago) said that in the sea-bed Committee his delegation had rejected proposals aimed at establishing a régime that sought to curtail the jurisdiction and sovereignty of islands over the ocean space adjacent to their coasts and was therefore discriminatory. His delegation had always had strong reservations regarding the inclusion of the item under discussion in the list of subjects and issues. Item 19 was a compromise and discussions on it must be restricted to islands under colonial dependence or foreign domination or control and other related matters. General solutions for delimitation problems between islands and other territories, whether they were insular or continental, and general criteria for the delimitation of the ocean space of islands should not be discussed under that item. The only relevant question was whether islands under colonial dependence or foreign domination or control were entitled to the breadth of territorial sea, exclusive economic zone, continental shelf rights and the jurisdiction to be established by the Conference in a new convention on the law of the sea. His delegation believed that they

were entitled to those rights and that, accordingly, the Conference should confer on such islands the same rights and benefits as it accorded to other territories or States. In the meantime, the United Nations had the obligation to expedite the decolonization of those islands, thus giving effect to the inalienable rights of colonized peoples to self-determination.

43. The very title of item 19 (a)—“Islands under colonial dependence or foreign domination or control”—discriminated against islands. Were there no continental territories that were still under colonial dependence or foreign domination or control? His delegation doubted that the proponents of the item intended to suggest that continental territories under the domination or control of metropolitan Powers should be treated differently from islands in a similar situation. The item should have been entitled “Territories under colonial dependence or foreign domination or control”.

44. His delegation acknowledged the complexity of the problems involved in the question of the delimitation of the ocean space between opposite and adjacent territories, whether continental or insular. It appreciated the difficulties encountered by the many States that were desirous of finding a peaceful solution to those problems, which were certainly more acute for territories that were in, or bordered on, enclosed or semi-enclosed seas than for other territories. However, no solution—even partial—was to be found in the curtailment of the ocean space jurisdiction of territories under colonial dependence or foreign domination. If such a curtailment took place, his delegation wondered what the situation would be after a colonial territory had attained its independence. Would an adjacent or opposite State then reduce the area of its jurisdiction in order to accommodate equitably the rights and interests of the newly independent State with respect to ocean space? His delegation very much doubted that it would.

45. A real problem still existed for those territories still under colonial or foreign domination, particularly those that were islands whose population pressures forced them to depend to a large extent on the sea for their nutritional needs, recreation and economic development. The associated States and other colonial territories of the Caribbean, although not yet fully independent, were self-governing entities responsible for the welfare of their peoples. They were legitimately entitled to the same rights and benefits in ocean space as were to be accorded to continental States in any new convention on the law of the sea. His delegation would strongly oppose any attempt to discriminate against island territories. The Conference must establish no régime for islands that was prejudicial to their interests. On the contrary, islands should be given more favourable treatment than continental land masses with respect to their jurisdiction over ocean space.

46. His delegation was not referring to uninhabited rocks and cays in the middle of the seas and oceans that were under foreign domination or control. Those rocks and cays were to be treated differently. Trinidad and Tobago supported the definition of islands contained in documents A/CONF.62/C.2/L.30 and 50. On the other hand, it found the definition of islets in the Romanian proposal in document A/CONF.62/C.2/L.53 quite arbitrary; it did not say at what point an island similar to an islet would be distinguished from an island.

47. The proposals in document A/CONF.62/C.2/L.30, particularly in part A, met the concerns of his delegation to a large extent. His delegation believed that the criteria for the delimitation of ocean space between adjacent or opposite States must be the same for islands as for other land territories. Part B of document A/CONF.62/C.2/L.30 reflected a correct approach to the problem, and his delegation agreed that a colonial territory had a right to the resources of the territorial sea, the economic zone and continental shelf. That right was vested in the inhabitants of that territory and was to be exercised by them for their exclusive benefit. It should not be assumed,

exercised, profited from or in any way infringed by a metropolitan or foreign Power administering or occupying the territory.

48. Mr. NANDAN (Fiji) said that the sponsors of the draft articles on islands and on territories under foreign domination or control in document A/CONF.62/C.2/L.30 were all island States in the South Pacific vitally interested in the establishment of fair criteria for the determination of their territorial seas and economic zones. His own country was primarily an archipelagic State, but it also had three islands to which the draft articles should apply. The two that were inhabited—the islands of Rotuma—were situated more than 200 miles from the main archipelago and separated from the submarine platforms underlying it. The people of Rotuma depended for their protein requirements almost entirely on the fish they caught. The islands had little prospect of economic development other than by expanding their fishing industry. They had no continental shelf as such and consequently little shallow water to serve as fish-breeding grounds, and the islanders had to travel considerable distances to catch migratory species of fish.

49. Thus, the situation of the Rotuman people was almost identical with that of the peoples of Tonga, the Cook Islands and Western Samoa. His delegation maintained that the peoples of such islands and the other small island territories of the South Pacific which were still dependent upon other States for their economic existence should enjoy the same territorial sea and economic zone as might be fixed for any other land territory. Indeed, because of their isolation and dependence on their surrounding waters, they had a special interest which should be reflected in the convention. His delegation supported the argument of Trinidad and Tobago that island States should receive special consideration.

50. The attempt to exclude uninhabited islands from the concept of the economic zone or even from having a territorial sea ran counter to article 10 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. To adopt any such proposals would be to impose an unjustifiable penalty on island States, particularly the small island territories of the South Pacific, all of which now enjoyed a territorial sea and contiguous zone around each of their islands and the right to explore and exploit the resources of the sea-bed and subsoil of the continental shelves of all their islands. No one had suggested that a continental State should be deprived of its sovereignty or economic rights in any of its uninhabited land areas.

51. There were several small island territories in the South Pacific which, while moving towards independence, were not yet sufficiently economically advanced to achieve that status. It was essential to the economic and political advancement of such territories that their peoples should enjoy full rights with regard to the economic zones and continental shelves belonging to their island territories. His delegation supported the argument set forth in the draft articles he had mentioned that such rights should be vested in the inhabitants of the territories to be exercised by them for their exclusive benefit. It also supported the proposal that there should be an international obligation on any metropolitan or foreign Power which might be administering or occupying such territories to ensure that such rights were in no way assumed, exercised or profited from or in any way infringed by the administering Power. Such an arrangement would help the territories to advance more rapidly to complete political and economic independence. Any other solution would lay them open to the plundering of their rightful resources; their transition to independence would be delayed and when they finally achieved that status they would succeed only to the crumbs that had escaped the depredations of distant-water operators.

52. Mr. ZELAYA UBEDA (Nicaragua) emphasized the importance of the régime of islands, particularly for countries in the Caribbean such as Nicaragua.

53. The future régime should guarantee the protection and defence of the economic interests of the peoples of islands or groups of islands which were completely separate from any continental formation or coastal State, whether such islands were occupied by a State or constituted, or were about to constitute, independent States and regardless of their geomorphological formation.

54. The waters surrounding islands or groups of islands or archipelagos forming part of the continental shelf and therefore part of the territory of a coastal State, or islands situated within the 200-mile territorial sea or economic zone of a coastal State should be regarded as coastal State waters. Any disturbance of that logical order would be detrimental to the concept of the inherent rights of coastal States and must be rejected. Any benefit deriving from the rights established or recognized by the future convention should go to the coastal State of which such islands formed a natural part. Occupation of such islands by a State other than the coastal State of which they were a natural part or of whose economic zone they were an integral part gave rise to special difficulties which must be dealt with in a spirit of equality and justice. The future convention must not be made an instrument which allowed the colonizing Powers to benefit from their territorial conquests and annexations. It was necessary to establish a strong and effective régime to discourage any attempt at the use of force in international relations, particularly in those parts of the world which had been balkanized and broken up into groups of States which were often geographically disadvantaged.

55. Referring to the islands which were of special interest to Nicaragua, he reiterated the views expressed by his delegation at the 16th meeting of the Committee.

56. The problem of islands assumed particular importance in the context of the delimitation of boundaries between States, and the concept of what constituted "opposite States" required clarification, particularly in the Caribbean. In order to avoid any ambiguity that might lead to more injustice, clear criteria were needed. His delegation proposed the inclusion of the criterion of the direction and position of the coastline, in the case of non-adjacent States which shared a common continental shelf and were not separated by abyssal depths, and in the case of overlapping and continuous national zones measured from main coastlines which were less than 400 nautical miles apart.

57. The matter was serious in the case of the *de facto* occupation of islands by another State. Occupation by a State of territory situated more than 400 nautical miles from its borders and constituting part of the national zone of another State—particularly if the territorial stretch was discontinuous—was a different situation that should not be covered in the future convention. In such cases, the title of the occupying Power to the continental shelf or territorial sea of colonized islands or archipelagos could not be held more valid than that of the coastal State from whose continental shelf or national zone they were taken. That was a logical and just criterion. The provisions of the new convention should not be used to justify violation or occupation by a State of territory which under the terms of the same convention would constitute part of the national zone of a coastal State.

58. For those reasons and others relating to the particular situation in the Caribbean his delegation had sponsored the draft article in document A/CONF.62/C.2/L.58. Having studied the proposals submitted by other delegations on the item under consideration, it was of the view that the proposals in that document had the advantage of containing precise provisions which stipulated that conquest and colonial domination should not benefit the aggressor strategically or economically. His delegation hoped that that basic principle would be strengthened by further proposals from other delegations. He trusted that it would not be necessary to make further reference to the matter.

59. Mr. LAPOINTE (Canada) said his delegation, which attached great importance to the question of islands, shared many of the views expressed by the representative of Trinidad and Tobago. A basic principle in previous conventions was that islands too had a territorial sea and continental shelf, and that principle should be retained in any future convention. The sovereignty of a State could not be determined by the size of its population.

60. It was true that islands required special consideration, and while rocks or islets could often be disregarded, if they were going to be taken into account at all small isolated islets should be treated as generously as mainland territories. His delegation acknowledged that sometimes such islets should be given special treatment; it wondered, however, whether the Conference would be doing the correct thing in denying a mid-ocean rock or islet full jurisdiction over its 125,000 square-mile zone. Some islets were larger than many countries participating in the Conference and some islands were important to a State because of their historical links. Thus, while his delegation was in favour of the future convention providing for special circumstances, no arbitrary rules should be laid down.

61. Delimitation posed problems but the convention could not be expected to solve them all. Those problems should be taken up in bilateral or multilateral negotiations, since the convention could not be expected to provide rules of universal application.

62. Mr. TUNCCEL (Turkey) said there were three important points that had to be borne in mind: first, islands had differing structures; secondly, the marine areas being established by the Conference would have to take into account a régime for islands; and thirdly, attention had been drawn to the importance of ensuring that the international area, in other words the common heritage of mankind, was as large as possible. In view of those three points, there was a need to reconsider the whole issue of islands. Whereas the 1958 Conference had dealt with islands only in the limited context of the territorial sea, the current Conference would be dealing with very large marine areas. The maps and other materials available to members showed that the treatment to be accorded islands would cause large areas to cease to be part of the high seas, thereby reducing the extent of the common heritage of mankind. He therefore appealed to delegations that had reserved their position on the issue to reconsider their attitude in the light of new conditions.

63. Introducing the draft articles in document A/CONF.62/C.2/L.55, he said that although article 1 had been left blank, it was intended to draw attention to the fact that the future convention must include an article giving definitions. As the representative of Colombia had pointed out earlier in the meeting, the enigmatic definitions of the Geneva Convention must be clarified. Although his delegation had not pressed its proposal, first put forward in the sea-bed Committee, calling for a study of islands with standard definitions which would form the basis of the definitions in the convention, it was still convinced that such a study would be useful. Article 2 was not intended to deny the extension of a State's jurisdiction to islands; the question involved was the determination of the marine spaces of islands. Article 3 was an effort to establish criteria for the allocation of areas to islands, although he appreciated the difficulties in seeking objective and unambiguous criteria. Paragraph 1 of that article dealt with the situation of islands under foreign domination, bearing in mind that the inhabitants of such islands must not be deprived of the resources of economic zones required to meet their economic and social needs. However, the inhabitants must decide for themselves. Paragraph 2 of article 3 took into account the delicate question of the islands of the continental shelf of his own country. Population and area ratios must be taken into account in allocating ocean space. Paragraph 3 of the article was based on the criterion of economic life. It had to be borne in mind that there were some islands which were without any

form of economic or social life. In that connexion he observed that navigation rights and military and police installations were not sufficient justification for establishing an economic zone. Paragraph 4 of article 3 followed the example of the Geneva Convention by denying marine space to rocks and low-tide elevations.

64. Mr. LISTRE (Argentina) introduced the draft article on item 19 (a) submitted by his own and a number of other delegations in document A/CONF.62/C.2/L.58. Its purpose was to ensure that in pursuing its task of striving for a balance between the interests of States individually and of the international community as a whole in the law of the sea, the Conference did not include the interests of those who were trying to perpetuate illegal colonial domination or occupation of islands or territories. Those interests, which had been rejected by the majority of the international community, could affect both the territorial integrity of other States and the right to self-determination of subject peoples. The Conference should bear both those cases in mind, in order to prevent the colonial or occupying Powers from adding a new element to their illegitimate interests in the islands and territories in question.

65. There was clearly a majority trend in favour of extending the traditional jurisdiction of the coastal State recognized under the old law of the sea. Those who supported such an extension had stressed the essentially economic basis of their claims. They were mainly developing countries, concerned with the struggle against colonialism. It would be illogical to allow their maritime claims to be used by the colonial or occupying Powers as a further pretext for maintaining their domination or occupation over islands or territories that did not belong to them.

66. The wording of the draft made it clear that the colonial or occupying Powers should not enjoy the benefits derived from the convention at the expense of the needs and interests of the indigenous people of the islands or territories. That provision would not, of course, apply where the inhabitants were nationals or descendants of nationals of the colonial Power. In the case of foreign occupation of islands or territories belonging to another State, the draft would not deprive the latter State of its rights of maritime jurisdiction in respect of the occupied part of its territory. In short, the sponsors had sought to ensure that the draft article could not be misapplied so as to worsen the already grievous situation of peoples suffering under colonialism. The reference at the end of the draft article to the duration of colonial domination or foreign occupation would, he hoped, meet the concern of the representative of Trinidad and Tobago.

67. Although a number of other proposals had been submitted to the Conference, based on similar anti-colonialist principles, he considered that the proposal he was introducing was the most satisfactory. The draft articles on the economic zone in document A/CONF.62/C.2/L.38 would deprive the colonial Power only of rights in the economic zone, whereas the draft article he was presenting deprived the colonial Power of all rights recognized or established by the future convention on the law of the sea.

68. The four-Power proposal in document A/CONF.62/C.2/L.30 was concerned with perhaps the commonest situation, in which a colonial Power prevented the indigenous people from freely expressing their will with respect to independence, but not with the case of a territory which belonged to a certain State and was unlawfully occupied by another State. Moreover, while it deprived the metropolitan or foreign Power of rights over the resources of the economic zone and the continental shelf, it said nothing about other rights.

69. The same applied to the proposals by Turkey in document A/CONF.62/C.2/L.55.

70. The Declaration of the Organization of African Unity (A/CONF.62/33) stipulated in paragraph 10, in section C, that

"nothing in the propositions set herein should be construed as recognizing rights of territories under colonial, foreign or racist domination to the foregoing;" but section C concerned the exclusive economic zone and the provision could therefore be interpreted as referring only to the rights of the coastal State in that zone.

71. The draft article of which his delegation was a sponsor was based on the principles of the United Nations Charter, on General Assembly resolution 1514 (XV) containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, on the work of the Committee on decolonization and on the many regional declarations made by the Latin American countries in the same spirit as those of the African and Asian peoples. He hoped that it would hasten the end of colonialism.

72. Mr. KOH (Singapore) said the Conference must consider whether all islands must be treated in exactly the same way as other land territories and be accorded a right to establish economic zones. The rationale for the proposal that coastal States should have the right to establish an economic zone was essentially based upon the interests of the people and the desire to marshal the resources of ocean space for their development. His delegation accepted that rationale in principle and therefore believed that island States should be entitled to establish an economic zone in the same way as continental coastal States. In the case of a Non-Self-Governing Territory, the rights over the economic zone should be exercised exclusively for the benefit of the people of the territory and not for the benefit of the administering Powers. On that point he agreed with the proposal contained in document A/CONF.62/C.2/L.30, whose sponsors he complimented for their constructive efforts. However, it would be unjust, and the common heritage of mankind would be further diminished, if every island, irrespective of its characteristics, was automatically entitled to claim a uniform economic zone. Such an approach would give inequitable benefits to coastal States with small or uninhabited islands scattered over a wide expanse of the ocean. The economic zone of a barren rock would be larger than the land territory of many States and larger than the economic zones of many coastal States.

73. If the common heritage of mankind was to be preserved, special provisions must be drafted to deal with the problem. Clearly, some criteria must be devised to differentiate between islands that deserved an economic zone and those that did not. A scheme of graduated breadths of the economic zone for different types of islands might also be considered.

74. Mr. THEODOROPOULOS (Greece) said that he was speaking on the question of the régime of islands, not with the intention of claiming additional maritime space, but out of concern for the preservation and integrity of his country's national territory and for equality of treatment for all parts of his country and all its citizens. Greece was a mountainous, deeply indented and resource-poor continental body flanked by two archipelagos; about a quarter of the total land area of the country was islands, accounting for about 15 per cent of the total population. The islands formed an intrinsic geographic, economic and political unit with the continental body of Greece, the distance between them not exceeding 42 nautical miles, and they were also part of Greece historically and culturally.

75. He introduced the draft articles contained in document A/CONF.62/C.2/L.50, which referred exclusively to agenda item 19 (b). With regard to item 19 (a), he supported the views expressed in document A/CONF.62/C.2/L.30. The intention of the draft articles submitted by his delegation was to secure for islands the same treatment, with regard to maritime zones, as for the continental territory. That view was also reflected in the draft articles in documents A/CONF.62/C.2/L.22, 25, and 32. That fundamental right of islands was universally ac-

cepted as a general rule under existing international customary and conventional law, subject, of course, to any adjustments agreed upon in bilateral or regional instruments.

76. Examining the validity of the claim of islands to possess a territorial sea equal in breadth to that of the continental territory of the State to which they belonged, he noted that the essential function of the concept of the territorial sea in law was to extend the national land territory over a certain limited maritime area, mainly for reasons of national defence and security. The territorial sea was thus the attribute of sovereignty over the territory and represented the maritime frontier of each State. Such a frontier was clearly essential, and in cases of adjacent or opposite States special measures of delimitation, such as the median line, would apply. It would therefore, he felt, be proper, if not indispensable, to give islands the same right as continental territories to a territorial sea. Some representatives, however, rejected that view, claiming that islands should not be permitted to extend their territorial sea to a uniform breadth of 12 nautical miles in order not to infringe upon their neighbours' maritime zones; that practice, which was unfortunately being arbitrarily applied in some cases, meant that islands should allow the seas surrounding them to be explored and exploited by their continental neighbours.

77. Another fallacious argument had been put forward in connexion with the question of the continental shelf, whereby islands were represented as having no shelf of their own. It should be borne in mind that continents and islands were part of the one earth crust, except for rare abnormalities, and therefore had a common shelf in nature and should have a common shelf in law as well.

78. The concept of the economic zone related directly to the economy of islands; it could not be denied that an island's economic life was sea-oriented, which meant that islands had a more pronounced need for maritime space. Some delegations, however, regarded islands as situated in the economic zone or on the continental shelf of other States, which implied that islands had no rights whatsoever. That reasoning could be reversed to prove that the opposite continental coast was situated in the economic zone of the island. It should be accepted that both islands and continental coasts did exist and were entitled to do so, unless they were invaded and their inhabitants bombed out or otherwise annihilated—which seemed to be the way of dealing with the problem these days. To deprive islands of the rights accorded to them under contemporary customary and conventional law and to try to apply various criteria to determine if they were eligible to be regarded as islands would reduce their status.

79. With regard to the question of definitions, he recalled that many representatives had stressed the need for clear-cut unambiguous rules for defining archipelagos and archipelagic waters, and suggested that the same need was felt with regard to islands. The proposals before the Committee suggested a number of criteria all of which were arbitrary: some recommended that an island must be one tenth of the surface of the State to which it belonged, or account for one tenth of the total population, while others recommended that it should be no more than a certain distance from the State, and still others recommended a geological criterion. The general rule of the equality of islands and continental territories would, if such definitions were accepted, become the exception, while special circumstances might become the general rule if it was accepted that islands were by definition "special circumstances".

80. Speaking in more general terms, he noted that the basic trend of the Conference was towards a considerable enlargement of the authority of States over the seas. That was reflected in the establishment of the international area as the common heritage of mankind, in the extension of national jurisdiction over the economic zone, in the widening of the territorial sea to 12 nautical miles, and in special arrangements for archipelagic

waters. Very pertinent remarks had been made about the need for equal treatment for all parts of a State's territory in support of the idea that archipelagos, both oceanic and coastal, should be given more favourable treatment; he indeed saw no reason to distinguish between oceanic and coastal archipelagos since the geographical factors involved were the same. There was, moreover, a wide consensus that all States, including land-locked and other geographically disadvantaged countries, should work together as partners. It seemed odd that one part of the earth, islands, should not benefit from that trend and

should even lose their rights under existing law and practice. He was not pleading for increased rights or special privileges for islands, but was simply proposing that insular populations should be on an equal footing with others and not deprived of their existing rights under international law.

81. Mr. ABBADI (Deputy Secretary of the Committee) announced that Peru and Morocco had become sponsors of document A/CONF.62/C.2/L.58.

The meeting rose at 1.10 p.m.

40th meeting

Wednesday, 14 August 1974, at 4 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Régime of islands (*concluded*)

[*Agenda item 19*]

1. Mr. MORALES PAUL (Venezuela) said that Venezuela attached great importance to the question of islands, as most of the islands in the chain along its coast were subject to the indivisible exercise of Venezuelan territorial sovereignty, even though the continuity of the chain was broken by islands under the sovereignty of another State. The Venezuelan islands also had archipelagic characteristics.

2. Article 1 of the 1958 Convention on the Continental Shelf¹ and article 10 of the 1958 Convention on the Territorial Sea and the Contiguous Zone,² both of which Conventions had been ratified by Venezuela, did not make the maritime jurisdiction of islands depend on their area, the length of their coasts, or any other criterion extraneous to the existing definition. He was pleased to note that the ideas underlying those provisions were shared by many delegations, as shown in documents A/CONF.62/C.2/L.30 and 50 and by the statement of the representative of Trinidad and Tobago at the previous meeting.

3. His delegation supported document A/CONF.62/C.2/L.58, but felt that the proposal in it should be supplemented by recognition of the right of the inhabitants of the territories to which it referred to exploit resources "in accordance with their needs and requirements", as stated in document A/CONF.62/C.2/L.30. That solution was a just one in that it allowed for the development needs of the inhabitants of dependent territories.

4. Mr. AMATO (Uruguay) said that his delegation, as a sponsor of document A/CONF.62/C.2/L.58, believed that a colonial or occupying Power could not validly invoke or exercise for its own benefit rights which belonged either to the sovereign State established when the colonial yoke was removed or to the sovereign State to which the occupied territory legitimately belonged.

5. His delegation did not deny the rights which belonged to the territory as such, irrespective of whether it was occupied or under colonial domination. That was clearly reflected in the phrase "as long as that situation persists". However, those rights could not be exercised or invoked by those who were not entitled to them. To provide the contrary would be to allow those rights to be usurped. The new law of the sea should be based on principles of justice and respect for self-determination and sovereignty and could not serve directly or indirectly to consolidate unjust or unlawful situations.

6. Mr. QUENEUDEC (France) said that his delegation, as it had stated during the debate on archipelagos, believed that

there was no legal justification for any distinction between continental land masses and islands with regard to the establishment of a zone where economic rights would be exercised, unless it was possible to arrive at a formula which took into account the divergent interests of the various States involved. The various proposals concerning islands submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and to the Conference demonstrated the practical impossibility of arriving at such a formula, since almost all of them aimed essentially at limited and unrelated objectives. As the representative of Trinidad and Tobago had demonstrated at the preceding meeting, those proposals, in attempting to satisfy particular interests—however legitimate those interests might be—entailed ingenious criteria and resulted in complex formulae which led other delegations to submit further proposals designed to solve the artificial difficulties that the original proposals created.

7. Certain proposals could not be retained in the form in which they had been submitted. Document A/CONF.62/C.2/L.30, for example, contained some interesting provisions, but its part B was difficult to accept in its existing form as it appeared to deny territories which had not attained independence or autonomy "following an act of self-determination under the auspices of the United Nations" economic rights over maritime resources. Did that mean territories attaining independence or autonomy outside United Nations auspices would be deprived of their natural rights over the resources of adjacent maritime areas? His delegation believed that it was impossible to make distinctions among islands, since that would amount to denying to certain island territories generally recognized economic rights. It was unnecessary to include particular provisions on that subject in the convention because of the recognized principle of the sovereignty of States.

8. However, if it was deemed necessary to lay down express rules, it would be sufficient to have a clause applying the fundamental rules of the sovereignty of States over all their territories, including islands, and recognizing the consequent rights.

9. The only real problem created by the existence of islands was that of delimiting areas under national jurisdiction. On that question also the various proposals that had been submitted seemed designed to cover particular or local situations. It should be possible to find a general rule allowing respect for the requirements of equity while leaving the door open for the consideration of the facts of each situation. In that regard the proposal in document A/CONF.62/C.2/L.28 reflected a viewpoint which deserved attention. The presence of islands or islets was, in fact, a special circumstance which should be taken into account when dealing with delimitation problems. Such

¹ United Nations, *Treaty Series*, vol. 499, p. 312.

² *Ibid.*, vol. 516, p. 206.

problems in any case, could be solved only through direct agreement between the parties concerned.

10. Mr. PONCE ENRIQUEZ (Ecuador) said that document A/CONF.62/C.2/L.58, of which his delegation was a sponsor, was so important that it could not fail to enlist the support of countries which believed in justice and in putting an end to the rule of force. It was inspired by concepts of liberty and independence and designed to ensure that the oppressive colonial Powers would find it more and more difficult to continue along the path of exploitation and injustice.

11. The Conference was working to establish a just and equitable system of international co-operation which would make it possible to narrow the enormous gap between rich and poor countries. Despite the process of liberation from colonialist régimes and despite the Declaration on the Granting of Independence to Colonial Countries and Peoples, there were still territories, including territories in the Americas, occupied by foreign Powers. The rights laid down in the future convention must not be used by those Powers to maintain their hegemony and to perpetuate the injustices created for their exclusive benefit. Those rights existed in order to facilitate the development and progress of free peoples. In keeping with the new concepts which should underlie the convention, they legitimately belonged to the inhabitants of the territories.

12. The peoples of the world were moving ever more rapidly towards liberty and independence and towards a greater awareness of their rights and of the need to acquire or claim them. Certain Powers, on the other hand, were speaking of the need for a political realism which divided the world into two areas for the purpose of distributing the benefits gained through intimidation. Neither that kind of political realism nor the continuation of colonial régimes was acceptable to his delegation. What had to be recognized, instead, was the indomitable strength of the countries which were striving for a just law of the sea. It was blindness not to accept that reality and to draw the logical conclusions from it.

13. Mr. ROBINSON (Jamaica) endorsed the statement of the representative of Trinidad and Tobago at the preceding meeting, particularly as it related to the rights of island territories such as those which constituted the associated States of the Caribbean.

14. In view of the inequities of the past, provisions such as those in articles 3 and 4 of his delegation's draft articles (A/CONF.62/C.2/L.35) should be included in the convention. Such provisions should relate not only to islands but to all territories under foreign domination, and should relate to all rights conferred by the convention, not just those relating to the economic zone. Part B of document A/CONF.62/C.2/L.30, which contained a useful formulation, could be amended to cover the latter point.

15. In principle, his delegation supported the view that every island generated and was entitled to its own territorial sea, economic zone and continental shelf. It could not endorse the view that an island's maritime space should be determined according to criteria different from those used for continental land masses. That approach would be legitimate if it were possible to isolate criteria which applied only to islands, but criteria such as size and population were as applicable to continental land masses as they were to islands, and it was difficult to understand why they should be used only to determine the maritime space of islands.

16. Mr. JACOVIDES (Cyprus) said that the proper treatment of the question of islands in accordance with the requirements of international law and equity was of vital national interest to his delegation and also a test of whether the new convention would be based on fairness and objectivity.

17. His delegation's fundamental position, set forth in its statements at the 40th plenary meeting and at previous meetings of the Second Committee, was that no distinction whatsoever

should be made between islands, irrespective of their size and population, and continental land masses, and that the principles for determining the territorial sea, the continental shelf and the economic zone of islands should be exactly the same as those that were applied in determining the corresponding national jurisdictions of continental land masses.

18. His delegation's position was firmly based on existing law and practice; he wished to refer in that regard to article 10 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, and to article 1 (b) of the 1958 Geneva Convention on the Continental Shelf. He was accordingly gratified to note that that position was shared by a large number of States, and not only by island States. His delegation particularly wished to associate itself with the views expressed by the representative of Trinidad and Tobago and by the sponsors of document A/CONF.62/C.2/L.30.

19. In the case of opposite or adjacent States, delimitation should, in the absence of agreements freely arrived at on the basis of equality, be based on the median line principle, which was equitable and firmly based in existing law. To avoid discrimination, that line should be measured from the insular as well as from the continental baselines.

20. His delegation hoped that the Conference would not allow itself to be swayed by attempts to promote narrow national interests, to the detriment of the legitimate rights of islands, which were based on such principles as the sovereign equality of all States.

21. Mr. SANTISO GALVEZ (Guatemala) stressed his delegation's deep interest in all questions relating to the liberation of peoples under colonial domination. In view of that interest, it had been among the sponsors of document A/CONF.62/C.2/L.58. In order to leave no doubt of his delegation's position in the event that that proposal was not adopted, he wished the following statement to be placed on record: Guatemala would not accept the application of any provision of the convention or conventions that the Conference might adopt, nor would it recognize any rights deriving therefrom, either in or for territories occupied by foreign Powers, in usurpation of the legitimate sovereign rights of other States over those territories.

22. Mr. KEDADI (Tunisia) said that the handful of countries which had done their utmost to prevent the inclusion of item 19 in the agenda and to delay its discussion were those whose interests were protected by the provisions relating to the régime of islands in the 1958 Geneva Conventions. Those provisions offered only a weak definition of islands and granted them the same rights as it granted continental land masses.

23. Such a situation favoured mainly those countries which had been able to extend their power over a large number of islands, while it was detrimental to the developing countries, which had not participated in the elaboration of the 1958 Geneva Conventions and which for the most part did not possess any islands. It was also unfavourable to all land-locked and other geographically disadvantaged States, which, having expected an equitable distribution of the resources of the international zone, were justly concerned at seeing that concept rendered meaningless by the exaggerated claims of countries possessing islands, particularly when the concept of the 200-mile economic zone and that of archipelagic States promised to become a reality.

24. The Declaration of the Organization of African Unity (A/CONF.62/33) was an attempt to resolve that conflict of interests and establish objective and equitable rules, and his delegation had demonstrated its full support for part B of that Declaration by joining in sponsoring documents A/AC.138/SC.II/L.40 and 43 (A/9021 and Corr.1 and 3, Vol. III, Sects. 29 and 32) and also document A/CONF.62/C.2/L.28, on delimitation.

25. A solution could be found only if the relevant clauses of the 1958 Geneva Conventions were tightened up and made more precise. To that end, he wished to introduce, on behalf of his own delegation and those of Algeria, Dahomey, Guinea, Liberia, Madagascar, Mali, Mauritius, Mauritania, Morocco, Senegal, Upper Volta and Zambia, draft articles on item 19 (A/CONF.62/C.2/L.62).

26. Articles 1 and 2 of the draft defined as accurately as possible the size of the different areas and the elevations of land, their degree of proximity to the coast, and the various factors that should be taken into account for the purposes of delimitation.

27. The provisions of article 3 would ensure that non-adjacent islands were not used for delimitation between adjacent or opposite States. That principle was in line with the provisions of document A/CONF.62/C.2/L.28.

28. Under article 4 the provisions of articles 1 and 2 would not apply to insular or archipelagic States, and a coastal State would not be entitled to claim rights based on the controversial concept of archipelagos by reason of its exercise of sovereignty over a group of islands situated off its coasts.

29. Article 5 which concerned islands under colonial domination or foreign occupation, provided that the rights to the maritime spaces and to the resources thereof belonged to the inhabitants of those islands and must profit only their own development.

30. The sponsors trusted that their proposal would be taken into account in the preparation of the informal working paper to be produced on item 19.

31. Mr. TANOË (Ivory Coast) requested that his delegation be included in the list of sponsors of the proposal introduced by Tunisia.

32. Mr. VENCHARD (Mauritius), speaking as a sponsor of document A/CONF.62/C.2/L.62, said that article 5 gave concrete form to paragraph 10 of the Declaration of the Organization of African Unity, and was very similar to part B of document A/CONF.62/C.2/L.30; it would ensure that the resources of islands under colonial domination or foreign occupation were vested in the inhabitants of such islands. In the case of inhabitants who had been displaced—a situation not provided for in that article—his delegation considered that their rights should not be affected by their displacement.

33. Mr. DUDGEON (United Kingdom) said that the question of islands was particularly important to the United Kingdom which itself consisted of a group of islands.

34. There was an immense diversity of island situations, ranging from large and populous islands forming part of even larger continental States to small islands with self-sufficient populations. The world community had already drawn up a body of rules for the maritime spaces of islands, including the rule that islands were entitled to a territorial sea and a continental shelf and the rule on drawing straight baselines round fringes of islands along the coast. There were, however, no rules classifying islands into different types.

35. Attempts had nevertheless been made at the Conference to divide islands into different categories by reference to various criteria, including size, population, position and political status. However, his delegation did not believe that that approach could result in any generally applicable rules that would be equitable in all cases. Indeed any such formulation was in grave danger of discounting many islands of both absolute and relative importance.

36. One criterion suggested was that of population. In various parts of the world, even in very recent times, several islands which had been inhabited and even self-sufficient had become uninhabited as a result of temporary or long-term changes in climate or economics. Other small islands, formerly uninhabited, had been populated or repopulated. Particularly

where the economy of States, or regions of States, with such islands was precarious, it would be grossly unfair to deprive them of, say, an economic zone which might prove a more permanent and certain means of achieving satisfactory development in the face of otherwise overwhelming geographical disadvantages.

37. A second criterion suggested was that of size; but there were large islands which were largely or completely uninhabited and small ones with dense populations which depended heavily upon the sea.

38. A third criterion put forward was the distance of an island from the mainland. In the case of island States and archipelagos, however, it was not possible to say in every case which island constituted the mainland.

39. A fourth criterion was the position of an island in relation to the coast of a foreign State. Reference had been made to an island situated within the territorial sea or on the continental shelf of a neighbouring State. However, in his delegation's view that begged the whole question. The island was entitled to a territorial sea of its own. The continental sea belonged to the island as much as to the neighbouring State. The real question was that of delimiting the territorial sea and the continental shelf between the two, and the same applied to the economic zone.

40. With respect to islands which had not yet attained independence, his delegation largely shared the view of the delegation of Trinidad and Tobago. So far as the dependent territories for which the United Kingdom Government was responsible were concerned, in most cases the principal reason for their continuing dependence was uncertainty about their economic viability. To deprive such territories of any right to an economic zone could only increase that uncertainty and make the attainment of independence more difficult. His delegation considered that the proposals in that sense would have the opposite effect to that which their sponsors presumably had in mind, and it could not support them.

41. The kind of detailed rules and principles proposed would inevitably bring about the very inequity which they purported to avoid. The existing law and State practice with regard to islands and their maritime spaces, reflected in proposals such as those in part A of document A/CONF.62/C.2/L.30, was perfectly adequate and should remain undisturbed. With respect to the question of delimitation of boundaries, the provisions of article 12 of the Convention on the Territorial Sea and the Contiguous Zone and article 6 of the Convention on the Continental Shelf, which laid down the three-part rule of agreement, special circumstances and median line were adequate and sufficiently flexible. Those rules already allowed for all the different circumstances existing; there was a risk in trying to do too much.

42. Mr. BENCHERKH (Algeria) said that his delegation had already given the essence of its position with regard to islands in its statement at the 37th meeting on archipelagic States. He therefore merely wished to endorse the arguments put forward by the representative of Tunisia when introducing the draft articles on the régime of islands (A/CONF.62/C.2/L.62) of which his delegation was a sponsor. He had noted with satisfaction the growing trend in favour of including in the future convention provisions which took account of the special circumstances of islands. With regard to islands lying in an enclosed or semi-enclosed sea which were neither islands nor archipelagic States, while his delegation had no intention of questioning the sovereignty of States over the different parts of their territory, including islands, it could not accept the attempt by some delegations to use that idea of sovereignty as a legal justification for the recognition of right to marine space over which the State already had rights as a continental coastal State, thus claiming double rights to those waters, both for itself and for the islands which were in fact part of its territory.

That argument would also lead to an unequal sharing of resources between coastal States in narrow seas. It was therefore unacceptable to the Conference and to the international community as a whole.

43. Any such delimitation must be done by bilateral or regional agreement according to principles of equity, taking account of special circumstances, in the interests of all the States concerned. That was a principal advantage of the draft articles in question, which he hoped would be carefully considered by the Committee and receive the support of many delegations.

44. Those considerations applied to narrow seas such as enclosed or semi-enclosed seas. More appropriate solutions based on the draft articles could be worked out for other circumstances, provided that such solutions were reasonable and took account of the overriding concept of the common heritage of mankind.

45. The future convention should ensure the preservation of the inalienable rights of peoples still under colonial domination in all fields, as proposed in draft article 5 of the document, and in accordance with the provisions of the Declaration of the Organization of African Unity on the issues of the law of the sea.

46. Mr. CASTAÑEDA (Mexico) said that the proposal in document A/CONF.62/C.2/L.58, of which his country was a sponsor, was not intended to prejudice in any way the interests of peoples that were subject to colonial domination but to stress that colonial status could not have a permanent legal basis but must be purely temporary. The principle of non-recognition of colonial domination should be as generally recognized as that of the non-recognition of the right to territorial acquisitions effected by force. The draft article expressed that principle and clearly stated that the occupying metropolitan Power had no right to the maritime spaces around those islands or to the resources thereof.

47. There was an immense diversity of island situations, as the United Kingdom representative had said, and it would be difficult, if not impossible, to draft specific regulations to cover them all. Therefore, the basic norm must reflect the provision in document A/CONF.62/C.2/L.30 that the marine space of an island must be measured in accordance with the same provisions as were applicable to other land territory. However, exceptions based on principles of equity could be accepted.

48. Mr. RASOLONDRABE (Madagascar) said that, as the representative of an island State, he was fully aware of the difficulty of distinguishing between an island State, an island and an islet. The draft articles in document A/CONF.62/C.2/L.62 were therefore aimed at giving clear definitions. There were three issues related to islands: sovereignty, maritime rights, and delimitation. With regard to the first two, there was no problem in the case of island States, but the rights of the inhabitants of islands under foreign domination or control must be clearly stated. Although the question of the remaining continental States under colonial domination was the most difficult and serious issue with which the Committee on decolonization had to deal, those States were now very few in number and most of that Committee's work was concerned with islands. His country supported the establishment in the future convention of the rights to the territorial sea and the economic zone not only of those islands which were under consideration by the Committee on decolonization but also of any other islands, however small, which were not yet economically and politically independent.

49. Delimitation was dealt with in draft article 2, which was very clear.

50. Mr. MALINTOPPI (Italy) said that, in the régime of islands, islands could not be deprived of their own territorial sea which was a constituent part of the territory of the State. The 1958 Geneva Convention on the Continental Shelf had also established the coastal State's rights to the sea-bed and

subsoil of submarine areas adjacent to the coasts of islands in the same way as of those adjacent to the coasts of its continental territory. Obviously, if States already exercised rights to the continental shelf of islands, those rights should be respected. A certain flexibility was called for in the provisions for the new concept of the economic zone and the duties and rights of States in that zone; that was legitimate since the Conference was engaged in developing progressive international law.

51. With regard to the delimitation between States of marine space which included islands, it was difficult to depart from the régime provided for by the 1958 Geneva Conventions. Endeavours had been made to establish lists of criteria to be followed in that delimitation or even to establish orders of priority among those criteria. Those proposals, however, tended to be arbitrary because they did not take account of the special circumstances of each case.

52. Finally, he would wait to study the proposals which, although they had just been explained by their sponsors, had not yet been circulated.

53. Mr. DE ABAROA Y GOÑI (Spain) said that in his delegation's view the following criteria should be taken into account in regulating the complex and difficult question of islands.

54. First, a generally acceptable definition of islands had to be established. That could be done by distinguishing islands from other geographical conformations which must also be defined with precision. Such a step would have the advantage of not including an over-general but rather a specific idea of islands in the future codification. In that connexion, he said that some of the proposals put forward contained elements that would be very useful in establishing the concept and legal régime to be applied to islands.

55. Secondly, if the future convention, following the 1958 codification, were to retain the assumption of "special circumstances" for delimitation, it would be necessary to specify the territories to which such special circumstances should apply. The mere presence of islands in a maritime space did not constitute *per se* a special circumstance; if it were so considered, the danger already existing in the imprecise idea of special circumstances would be intensified, and it would become extremely difficult for neighbouring States to negotiate on delimitation of maritime spaces close to islands.

56. Thirdly, an appropriate method must be found to solve the problem of the régime of islands. In his delegation's view the point of departure should be equal treatment for all parts of a State, whether continental, insular or archipelagic. Moreover the régime of islands must be based on the following fundamental principles: first, the territorial unity and integrity of the State, including the territorial waters and the air space above them; secondly, the indivisibility of the sovereignty of the State over its territory, continental or maritime; and lastly the sovereign equality of all States, great or small, insular or archipelagic, continental or "mixed".

57. Those general criteria would, in his delegation's view, provide a satisfactory solution for the delimitation of maritime spaces under the jurisdiction of neighbouring or opposite States and allow for adaptation in exceptional cases.

58. The CHAIRMAN announced that the discussion on item 19 had been concluded.

Transmission from the high seas

[Agenda item 24]

59. Mr. DUDGEON (United Kingdom) drew attention to document A/CONF.62/C.2/L.54 submitted by the nine States of the European Economic Community, and in particular to article 21 *ter*, which referred to co-operation in the repression of unauthorized broadcasting from the high seas. That article had been included in a working document on the high seas and was extremely relevant to the item before the Committee. His

delegation hoped that its provisions would be included in any further working document on the subject.

60. The CHAIRMAN agreed that that would be done.

61. Mr. BARSEGO (Secretary of the Committee) announced that 28 other delegations wished to join the sponsors of document A/CONF.62/C.2/L.42/Rev.1. They were: Algeria, Ar-

gentina, Burma, Brazil, Chile, Colombia, Cuba, Cyprus, Ecuador, El Salvador, Ghana, India, Iran, Jamaica, Libyan Arab Republic, Mauritania, Mauritius, Morocco, Nigeria, Panama, Peru, Philippines, Senegal, Trinidad and Tobago, United Republic of Cameroon, Uruguay, Venezuela and Yugoslavia.

The meeting rose at 5.45 p.m.

41st meeting

Friday, 16 August 1974, at 10.50 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Introduction of draft proposals

1. The CHAIRMAN observed that, in accordance with the Committee's wishes, the meeting had been convened in order to give delegations an opportunity to introduce draft proposals.

2. Mr. OLSZOWKA (Poland) introduced document A/CONF.62/C.2/L.26, which had been sponsored by the delegations of Bulgaria, the German Democratic Republic, the Soviet Union and Poland. The document contained draft articles on the territorial sea and dealt in particular with the nature and characteristics of the territorial sea, its breadth and delimitation, and the right of innocent passage.

3. Article 1 reaffirmed the sovereignty of coastal States over their territorial sea, and specified that all the resources in the territorial sea were under that sovereignty. It would be noted that, under the draft articles, coastal States exercised their full sovereignty, subject only to recognized restrictions, such as the right of innocent passage. Comparison with the draft articles concerning the economic zone submitted by the same sponsors together with the delegations of the Byelorussian SSR and the Ukrainian SSR (A/CONF.62/C.2/L.38) revealed a distinction between the proposed rights to be granted to the coastal State in the territorial sea, on the one hand, and in the economic zone, on the other. Article 1 of the proposal in document A/CONF.62/C.2/L.26 followed the pattern of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone,¹ which could be considered as reflecting general rules of international law.

4. The sponsors of the draft articles had taken into account the practice of the large majority of States, and accordingly article 2 authorized each State to determine the breadth of its territorial sea within a maximum limit of 12 nautical miles. That breadth, he believed, represented a fair balance between the interests of coastal States and those of the international community.

5. The sponsors considered that the complex and highly technical problem of measuring the breadth of the territorial sea had been satisfactorily resolved in the 1958 Geneva Convention. Thus they proposed that articles 3 to 13 of that Convention should be reproduced without any change. The different systems of drawing baselines provided for in that Convention were generally recognized and had been referred to by the General Assembly in the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof.² The sponsors did not, however, wish to preclude the possibility of filling certain gaps in the Geneva Convention, particularly in relation to the baselines of oceanic archipelagos.

6. The main part of document A/CONF.62/C.2/L.26 dealt with the right of innocent passage through the territorial sea. Generally speaking, the draft articles were more elaborate than the provisions of the Geneva Convention on the Territorial Sea and the Contiguous Zone, and the concept of innocent passage and the ways in which it would be translated into practice were defined more precisely. Thus, all the acts which were to be incompatible with the right of innocent passage were specified in article 16, paragraph 2. Furthermore, in paragraph 3 of that article, as in the Geneva Convention, foreign fishing vessels were required to observe the laws and regulations promulgated by coastal States, and, in paragraph 4, submarines were required to navigate on the surface and to show their flag.

7. Under article 19, the coastal State was authorized to take the necessary steps in its territorial sea to prevent non-innocent passage. Article 20 reaffirmed the right of a coastal State to adopt laws and regulations in respect of innocent passage and, at the same time, stipulated that such laws and regulations must comply with the provisions of the convention as a whole and other rules of international law. It further specified the different areas in which the coastal State could adopt legislation and regulations.

8. Generally speaking, the sponsors of the draft articles had been at pains to strike a balance between the interests of the coastal State and those of international navigation. The coastal State was required not to hamper innocent passage or to discriminate between foreign ships and must ensure that any navigational hazards of which it had knowledge were adequately publicized.

9. Although the sponsors were convinced that the main provisions of the draft articles constituted an equitable and viable solution to the various problems concerning the territorial sea, they were prepared to consider any suggestions or amendments which would improve them and make them more generally acceptable.

10. Mr. RYAN (Australia) introduced the proposals contained in document A/CONF.62/C.2/L.57. He had asked for the draft article, which concerned highly migratory species, to be included in the revised working paper as a distinctive trend. The article stressed the need for international and regional co-operation in matters relating to the conservation and management of highly migratory species. The organizations envisaged in paragraph 1 would issue regulations governing the conservation and management of any given species with the object of ensuring rational exploitation of the species within its maximum sustainable yield. The regulations could include the establishment of national quotas. The provision contained in paragraph 4 (a) was very important to many coastal States. If a coastal State preferred to build up a short-range fishing fleet to fish for highly migratory species, it should be protected against competition from long-distance fishing fleets that had the advantage of being able to follow the fish wherever they went.

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

²General Assembly resolution 2660 (XXV).

That was particularly so in the case of his own country, whose main fishing for highly migratory species took place within the 200-mile limit. Nevertheless, fishing by coastal States must not violate the regulations of the relevant international organization. He commended the draft article to the Conference as an effective means of managing stocks of highly migratory species while protecting the interest of coastal States and of States operating long-distance fishing fleets.

11. Mr. STEVENSON (United States of America) said that his delegation had presented draft articles on the economic zone and continental shelf in document A/CONF.62/C.2/L.47, but had been unable to introduce them at the time of the general debate on those subjects. He had referred to certain specific proposals in the closed meeting on Informal Working Paper No. 3, but there were a number of general points he wished to make.

12. The proposals contained in the document were intended to replace the draft articles on fisheries³ and on the coastal seabed economic area (A/9021 and Corr.1 and 3, vol. III, sect. 24) previously submitted in Sub-Committee II of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, and were presented as a basis for negotiation subject to agreement on other basic questions of the law of the sea.

13. As far as the general concept of the economic zone was concerned, what was involved was not merely coastal State rights but coastal State jurisdiction. That jurisdiction extended to the renewable and non-renewable resources of the zone, as well as to the rights and duties with respect to the protection of the marine environment and scientific research specified in the convention. It also involved rights of the coastal State in respect of installations used for economic purposes and drilling for any purpose.

14. An effort had been made to balance the rights of the international community recognized by general international law against those granted the coastal State under the convention: nevertheless, rights acquired by the coastal State pursuant to the draft articles, as, for example, with respect to fishing, would prevail. In view of the need for balance in harmonizing different interests in an area of ocean space used for various purposes at the same time, the same language of "without unjustifiable interference" had been used to indicate that the exercise of rights of coastal States should not interfere with those of other States and vice versa.

15. His delegation considered the question of including conflict resolution procedures to be of vital importance in accommodating different uses of the same economic zone.

16. The draft articles relating to fisheries gave the coastal State not just rights, but to jurisdiction over fisheries conservation and management in the economic zone. The articles indicated clearly that it was the coastal State that determined conservation, subject to certain general principles in the articles. Although generally accepted standards should be taken into account, the coastal State was under no obligation to await recommendations from an international fishery organization or to follow those recommendations.

17. A coastal State must decide for itself if its resources were being fully used by its nationals. There should be recourse to the dispute settlement machinery only when the validity of the coastal State's conservation measures under the articles or the correctness of the coastal State's assessment of full utilization were questioned, and pending settlement the coastal State measures would remain in force.

18. It was vital to the preservation of anadromous species to take into account the fact that they returned to the rivers of their birth to spawn. The draft articles would prohibit fishing

for anadromous species seaward of the territorial sea except with the consent of the State of origin.

19. In draft article 19, on highly migratory species, an effort had been made to take into account scientific evidence that made it critical to agree on international arrangements for the conservation and management of such species, while recognizing the clear interest of the coastal States in whose economic zone such fish were caught in an equitable share of the benefits. Suitable principles must be developed to give meaningful recognition to that interest. Moreover, the coastal State in whose economic zone highly migratory species were caught by foreign vessels should be entitled to reasonable fees.

20. The draft articles provided for coastal State sovereign rights over the continental shelf for resource exploitation purposes out to the outer limit of the continental margin, but at the same time, article 27 (b) provided for payments to the international community in respect of exploitation beyond the 200-metre isobath or the seaward limit of the territorial sea, whichever was farther seaward. That was suggested as a way to reconcile the positions of States which maintained that their rights extended to the edge of the continental margin beyond 200 miles and those that did not wish to see the common heritage of mankind diminished by recognizing coastal State jurisdiction beyond 200 miles. Although the principle had not yet been agreed upon, he hoped that Governments would consider it as a possible accommodation.

21. Article 28 contained provisions ensuring coastal State control over installations for the exploitation of resources and other economic purposes and over installations that might interfere with the resource rights of the coastal State. Unlike the Convention on the Continental Shelf,⁴ the new draft articles envisaged the possibility of safety zones extending more than 500 metres around installations in conformity with any applicable international standards. Such larger zones might be necessary in the case of new types of continental shelf installations such as airports and superports.

22. Mr. TUNCEL (Turkey) said that, according to information recently published by the press, the parliament of a certain country had promulgated a law enabling the Government to authorize enterprises to establish artificial islands up to a distance of 30 miles from its coast. As the representative of the United States had already mentioned, artificial islands and installations included harbours and airports and, in view of the swift rate at which technology was being developed, might soon comprise many other different kinds of installations. That being so, the proposals concerning artificial installations in document A/CONF.62/C.2/L.47 were of extreme interest.

23. The United States delegation was proposing in article 28 safety zones that would extend to a distance of 500 metres around such installations. That distance was the same as that suggested in the Geneva Convention on the Continental Shelf. However, in view of the size of contemporary installations, his delegation believed that such a diameter was insufficient and preferred the idea of "reasonable safety zones", which was also contemplated in the United States draft. Indeed, the safety zones around the larger installations designed to service the giant tankers now being built should extend to a distance of at least a few kilometres. Although the United States draft stated that the breadth of the safety zones should conform to applicable international standards to be established by the Inter-Governmental Maritime Consultative Organization, his delegation believed that the Conference had a duty to elucidate the issue first. He therefore hoped that the Committee would give the problem the attention which it deserved.

24. Another problem which must be resolved was the question of the rights of the coastal State within the safety zone. The United States delegation was of the opinion that the coastal State should take appropriate measures to ensure the

³Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 and corrigendum, annex III, sect. 7.

⁴United Nations, Treaty Series, vol. 499, p. 312.

safety of the installations and of navigation. His delegation endorsed that approach, since it did not believe that the coastal State should be entitled to exercise within the zone rights similar to those of innocent passage.

25. The CHAIRMAN pointed out that the meeting was confined to the introduction of proposals and that any comments of the kind expressed by the representative of Turkey should be made at a later stage.

26. Mr. ABBADI (Secretary of the Committee) said that the delegation of Sierra Leone had added its name to the list of original sponsors of document A/CONF.62/C.2/L.62, from which it had been inadvertently omitted. The delegations of Bangladesh, Guatemala, Guinea, Haiti, Indonesia, and Somalia had become sponsors of document A/CONF.62/C.2/L.42/Rev.1 and the delegations of Cuba and the Libyan Arab Republic of document A/CONF.62/C.2/L.58.

The meeting rose at 11.35 a.m.

42nd meeting

Monday, 19 August 1974, at 12.15 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

In the absence of the Chairman, Mr. PISK (Czechoslovakia), Vice-Chairman, took the Chair.

Introduction of draft proposals (*continued*)

1. Mr. JEANNEL (France), introducing document A/CONF.62/C.2/L.54 on behalf of the sponsors, said that the principles and provisions of the 1958 Geneva Convention on the High Seas¹ should be retained for the area beyond the territorial sea, subject to any modifications that might be necessary because of the introduction of new provisions.

2. The sponsors felt it necessary to state precisely the obligations of the flag State since the relevant articles of the Geneva Convention were incomplete. Article 6 *bis* of their draft made article 5 of the Geneva Convention more explicit with respect to the responsibilities of the flag State. Article 10 of the draft was intended to ensure safety at sea and article 21 *bis* provided for co-operation by all States in the suppression of illicit traffic in narcotic drugs by ships on the high seas. The provisions of article 21 *bis*, paragraph 2 were included to prevent ships of small tonnage from discharging illicit cargo before entering ports. Article 21 *ter* was intended to repress unauthorized broadcasting from the high seas, particularly commercial and propaganda broadcasts.

3. The sponsors felt that their proposals could form the basis for useful discussions at the next session of the Conference.

4. Mr. VOHRAH (Malaysia) introduced document A/CONF.62/C.2/L.64, which contained amendments to the draft articles relating to archipelagic States contained in document A/CONF.62/C.2/L.49.

5. He drew attention to the statements made by his delegation on the question of archipelagos at the 35th plenary meeting and at the 25th and 37th meetings of the Second Committee. On each of those occasions, his delegation had clearly stated that the archipelagic concept and its implications were crucial not only to Malaysia but also to the other countries in the South-east Asian region. Statements in the Committee by Malaysia's neighbours bore ample testimony to the great importance that most of the South-east Asian countries attached to the archipelagic concept and its implications.

6. His Government had adopted a political decision to support the archipelagic concept despite the fact that it would create special, and indeed unique, problems for Malaysia. A glance at a map of the South-east Asian region would enable the members of the Committee to understand the extent of the sacrifice that his Government was making in order to try very hard indeed to meet the aspirations of some of its neighbours in

the pursuit of their archipelagic claims. His Government had done that in the spirit of friendship, good neighbourliness and understanding.

7. The two parts of his country—West Malaysia and East Malaysia—were separated by the South China Sea, which was dotted by two small groups of Indonesian islands, namely the Anambas and Natuna islands. The archipelagic boundary as claimed by Indonesia would enclose both those groups of small islands within the Indonesian archipelago. The effect of that claim would result in the sudden severance of the free access and all forms of communications which Malaysia had always enjoyed through the high seas between the two parts of its territory. Consequently, it would be deprived of links that were vital to the maintenance of its geographical, economic and political unity as a sovereign and integral nation State. The situation of Malaysia was, he believed, unique in that respect.

8. It would be recalled that a vague provision aimed at accommodating the rights and interests of a country placed in a situation such as his had been included in article 6, paragraph 2, of document A/CONF.62/L.4. His delegation, however, had expressed its reservations concerning that paragraph, which failed to take full account of the serious problems that his country would face, and also concerning the provisions of article 7 of the same document which, in its view, qualified those of article 6.

9. The formulation in article 2, paragraph 5 of document A/CONF.62/C.2/L.49, while it represented an improvement on the previous formulation, should, his delegation believed, take into account both direct access and all forms of communications, which undoubtedly were of paramount significance to his country in the context of its national unity. It should also clearly state that such rights of direct access and communications should continue to be recognised and guaranteed by the archipelagic State. That was why his delegation had submitted the first of the two amendments contained in document A/CONF.62/C.2/L.64.

10. His delegation was also of the view that articles 4 and 5 of document A/CONF.62/C.2/L.49, as formulated at present, would have the effect of qualifying article 2, paragraph 5, of the same document, and would thus render the notion contained therein quite meaningless as far as Malaysia was concerned. It had accordingly proposed a second amendment in document A/CONF.62/C.2/L.64 which would remedy the defect.

11. He appealed to the sponsors of document A/CONF.62/C.2/L.49 to consider both the amendments that his delegation had submitted in a constructive manner and hoped that they would not find too much difficulty in accepting them.

12. Lest his delegation be misunderstood, he wished to state that it was the understanding of his delegation that the archipe-

¹United Nations, *Treaty Series*, vol. 450, p. 82.

logic concept was a concept for which international recognition was being sought by a number of States at the Third Conference on the Law of the Sea. It was still a claim which had not yet been accepted as part of international law. While his delegation supported the archipelagic concept, it did not envisage nor would it accept a situation which would result in the establishment of new rights for the archipelagic States in such a manner as to destroy or jeopardize the legitimate and existing rights of other States. It was, therefore, obvious and imperative that before the archipelagic concept could be accepted as a norm in international law there must be some accommodation, especially on the part of the archipelagic States, to safeguard the legitimate and existing rights of other States adversely affected by the archipelagic concept. Such accommodation should in no way be construed or seen as a concession made by the archipelagic States; rather, it was crucial for the maintenance of peace and friendly relations both for the present and the future, among States in any region, especially in the region of which Malaysia formed a part.

13. He reserved the right of his delegation to submit further amendments on the other provisions contained in document A/CONF.62/C.2/L.49 as and when it deemed it necessary.

14. His delegation would like the amendments contained in document A/CONF.62/C.2/L.64 to be reflected in the revised version of the informal working paper relating to archipelagos.

15. Mr. WISNOEMOERTI (Indonesia) expressed his delegation's appreciation to the representative of Malaysia for submitting document A/CONF.62/C.2/L.64. His delegation wondered, however, what was the reason for including the words "access and all forms of communications" in the amendment to article 2, paragraph 5, of document A/CONF.62/C.2/L.49. The sponsors of the latter document had recognized the need to avoid a situation in which the concept of an archipelagic State might interfere with the direct communications between one part and another part of the territory of an immediately adjacent neighbouring State. As it stood, article 2, paragraph 5, of

the document provided for the maintenance of such direct communications. In drafting the paragraph, the sponsors had considered that the words "direct communications" were quite adequate for that purpose. The words "access and all forms of" were therefore superfluous and could be interpreted so as to include activities other than mere direct communications, a situation to which his delegation would object.

16. Since consultations on the problem between the Indonesian Government and the Governments of neighbouring countries were still being pursued, his delegation would refrain, for the time being, from giving its final views on the amendments in document A/CONF.62/C.2/L.64.

17. Mr. O'DONOGHUE (New Zealand), introducing document A/CONF.62/C.2/L.66, said that the reasons for extending the right of hot pursuit to violations in the economic zone or on the continental shelf had been fully explained in his statement at the 31st meeting of the Committee. He therefore requested the Committee to take note of the draft article in the document which he had just introduced.

18. Mr. ARIAS SCHREIBER (Peru) asked the sponsors of document A/CONF.62/C.2/L.54 to clarify the meaning of article 6 *bis*, paragraph 3, of their draft. That paragraph provided that in taking the required measures, the flag State should conform to generally accepted international norms. It did not say that the flag State should take such measures in accordance with its national regulations, which took account of those international norms. In other words, it provided that the national regulations should merely reproduce the international regulations. That seemed to be out of line with article 10, paragraph 2, which provided that in taking such measures, States should bear in mind international norms. He wondered whether the sponsors had really intended there to be a difference between the two paragraphs he had mentioned.

19. Mr. LABROUSSE (France), speaking on behalf of the sponsors, said that the Peruvian representative's question had been noted; a reply would be given at a subsequent meeting.

The meeting rose at 12.45 p.m.

43rd meeting

Friday, 23 August 1974, at 11 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Organization of work

1. The CHAIRMAN reminded members that at the 9th informal meeting of the Committee, on 15 August 1974, the Committee had approved the proposal on the organization of work which he had submitted for its consideration on behalf of the Officers. The proposal, as adopted, was as follows.

2. First, priority would be given to the completion of the first stage of the Committee's work, namely, the consideration of the informal working papers which had yet to be discussed and their possible revision.

3. Secondly, simultaneously, whenever time was available, the Committee would undertake a second reading of the items allocated to it, which would be regrouped as follows:

Group I: item 2 (Territorial sea); item 4 (Straits used for international navigation); item 16 (Archipelagos); and item 3 (Contiguous zone). Item 17 (Enclosed and semi-enclosed seas), item 18 (Artificial islands and installations), and item 19 (Régime of islands) could also be discussed in so far as they related to the other items included in the group.

Group II: item 5 (Continental shelf); item 6 (Exclusive economic zone beyond the territorial sea); item 7 (Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea); item 10 (Rights and interests of shelf-locked States and States with narrow shelves or short coastlines); and item 11 (Rights and interests of States with broad shelves). Item 9 (Land-locked countries), item 17 (Enclosed and semi-enclosed seas), item 18 (Artificial islands and installations), and item 19 (Régime of islands) could also be discussed in so far as they related to the other items included in the group.

Group III: item 8 (High seas) and item 24 (Transmission from the high seas). Item 18 (Artificial islands and installations) and item 19 (Régime of islands) could also be discussed in so far as they related to the other items included in the group.

4. Thirdly, the aim of the second reading was to reduce, as far as possible, the number of alternative formulations in the working papers. Consequently, discussions should therefore be focused on differences of substance, not on questions of

drafting, except where new wording could help to combine alternative formulations.

5. Fourthly, there would be an opportunity for delegations to introduce proposals in formal meetings of the Committee. It was to be hoped that those new proposals would be primarily designed to consolidate texts and thus reduce the number of variants. However, most of the work in the second stage would be carried out at informal meetings.

Introduction of draft proposals (*continued*)

6. Mr. GALINDO POHL (El Salvador) introduced two documents submitted by his delegation, namely, a working paper on the exclusive economic zone (A/CONF.62/C.2/L.60) and a working paper on the high seas (A/CONF.62/C.2/L.68). The purpose of those documents was to determine the distinctive features of the two areas and to put forward certain norms that might be embodied in the new régime of the high seas. His delegation hoped that its proposals would be reflected in the revised versions of the working papers.

7. Where possible, the proposals submitted by his delegation maintained the language of the 1958 Conventions. Many of the rules embodied in the 1958 Convention on the High Seas¹ codified ancient customs and should be retained; but they needed to be brought into line with other chapters of the convention embodying the new régime. On the whole, however, changes should be kept to the bare minimum in order to facilitate the drafting of the future convention.

8. As far as the exclusive economic zone was concerned, his delegation felt that the following elements should be inserted in the formulations already submitted concerning the characteristics of that zone: other economic uses of the waters, residual competences and rights in favour of the coastal State, and the indication that the exclusive economic zone was contiguous to the high seas.

9. The economic zone had been conceived as an intermediate zone between the traditional territorial sea and the high seas. Its distinctive features must be clearly established, and to that end special attention must be paid to the elimination of any possible confusion between the high seas and the economic zone. Thus, when indicating the limits of the high seas, it would be appropriate to alter the language of the 1958 Convention and to state that the high seas did not include the internal waters, the territorial sea or the exclusive economic zone of a State.

10. Similarly, adjustments were required to the rules concerning the right of hot pursuit. Such pursuit should be possible within the economic zone of a State, might be continued on the high seas, but must cease in the economic zone of the flag State or of a third State. A modification of the rules along those lines was necessary to safeguard investments, installations and exploitation in the economic zone.

11. The 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas² reflected the interests of a few individual States and should be revised in order to safeguard the interests of all States without exception and, if possible, the interests of the international community. Thus the final article in document A/CONF.62/C.2/L.68—which was not intended to prejudge the outcome of the work of the Conference—provided that all States had the right to engage in fishing on the high seas and that all States had the duty to co-ordinate their activities to ensure conservation of the living resources in the high seas and equitable participation in the utilization of such resources. It also laid down the obligation for all States to co-operate in the organization of research studies and systems, the regulation of fishing and the prohibition of devices unsuited to the maintenance of the optimum sustainable yield of living resources.

12. His delegation considered that the vague mention of freedoms appearing in the second part of article 2 of the 1958 Convention on the High Seas should be replaced by specific provisions enumerating all the freedoms allowable under international law. Thus document A/CONF.62/C.2/L.68 referred not only to the four freedoms mentioned in the 1958 Convention but also to the freedom of scientific research. Furthermore, his delegation was willing to accommodate the interests of other delegations, although it considered the five freedoms enumerated in article 2 of the document to be sufficient.

13. When the high seas had been subject to very flexible rules of international law, the failure to specify all the freedoms had perhaps been justified. The truth of the matter was that nothing or almost nothing had been prohibited and that for many years the high seas had constituted a privileged area. However, the philosophy underlying the new régime must be different, and all the freedoms should be regulated in order to ensure the orderly, rational and equitable use of the high seas in the contemporary world. Regulation meant neither the disappearance nor the annihilation of freedom, but rather order and the equitable accommodation of the interests of the many users and beneficiaries, according to the guiding principles of contemporary international relations, namely, the juridical equality of all States, non-discrimination, reasonable access to natural resources and the most recent principle, namely international distributive justice.

14. Speaking in terms of political and juridical science, it could be said that the freedoms of the high seas in the sense of complete freedom of action represented the natural state, but that the time had come for the world to make the transition from the natural state to that of international civilized society by means of a convention on the new régime of the high seas. Thus freedoms in the sense of freedom of action would be transformed into freedoms in the sense of regulated powers, reflecting co-operation among States and representing the exercise of an authority granted, protected and safeguarded by the international community.

15. The time was ripe for a new régime of the high seas which took account of the realities of the contemporary world. The process of revision had begun in 1958 with the Convention on Fishing and Conservation of the Living Resources of the High Seas, but little progress had yet been made owing to the lack of robust means for applying the agreed norms effectively. Moreover, that Convention was permeated by the philosophy of conflicting national interests in open competition, whereas the new philosophy called for inter-State co-operation. Thus the high seas would become an international sea whether or not the old name was infused with new meaning or was changed in order to emphasize the separation between the past under the rule of freedom of action and the future under the rule of rationally regulated freedom.

16. The scientific and political theories which had made the high seas a preserve where the firstcomer could exploit the resources had been understandable when those resources had been inexhaustible. However, now that the high seas were threatened by pollution, the depletion of species and activities prejudicial to the health and even the survival of mankind, there was an urgent need for a new régime governing their use and exploitation. It was therefore necessary to ensure the co-ordination of the activities of all States as an expression of their common interest. It was also high time to recognize the interests of all States and of the international community, not simply those of a few individual States, bearing in mind that unconditional freedoms and lack of regulation served the interests of the strongest.

17. Mr. ROUX (France), introducing document A/CONF.62/C.2/L.74, said that the draft article appearing in that document was designed as a solution to the problem raised by the existence of islands which might benefit one State to the detriment of its adjacent or opposite neighbours. Some delega-

¹United Nations, *Treaty Series*, vol. 450, p. 82.

²*Ibid.*, vol. 559, p. 286.

tions found themselves in an impasse because they made a distinction between the rights a State could claim over ocean space as a function of its sovereignty over a part of a continent, as opposed to its sovereignty over island territories. Such a distinction was legally untenable: a territory itself, be it continental or insular, had no right to a continental shelf or an economic zone; it was the State which possessed rights over the ocean space adjacent to its territory, and the foundation of those rights lay in the sovereignty which it exercised over the land. To establish a separate régime for islands would be to accept the erroneous notion that a State's sovereignty could be different in nature according to whether it was exercised over a continent or an island.

18. It was one thing to define the rights of States over the ocean space adjacent to their territory, but it was something else to delimit the continental shelf or the economic zone of adjacent or opposite States and to take into account, in so doing, the erroneous notion that the islands belonging to one of the States. As long as that difference was not perceived, islands would continue to be a source of controversy.

19. His delegation's draft article was designed to make the distinction clear and to show that the concerns of certain delegations could be satisfied without jeopardizing one of the least controversial principles of international law—the indivisibility of State sovereignty.

20. Any consideration of the problem of delimitation must take into account the great diversity of geographical situations. The natural conclusion was that the idea of a universal method must be rejected. Delimitation was primarily a bilateral or regional matter. All that should be done at the world level was to lay down guidelines for the negotiators. The one decisive factor was equity, a point made by the International Court of Justice in connexion with the North Sea cases.³

21. Mr. TREDINNICK (Bolivia), introducing the draft articles on the "regional economic zone" (A/CONF.62/C.2/L.65) sponsored by his delegation and that of Paraguay, said that the innovatory terms "regional sovereignty" and "common heritage of the region" might appear strange to some delegations. In time, however, it would be realized that the only way to achieve justice and equity was to establish large regional economic zones in which all the States of a region, especially the land-locked countries, would co-operate fully.

22. Mr. SHEARER (Lesotho) said that his delegation had held consultations with the delegations of other land-locked countries and those consultations had led to the amendments contained in document A/CONF.62/C.2/L.45/Rev.1. The revised document differed from the original primarily in the deletion of the proposed detailed article defining the legitimate interests of the transit State. The sponsors had agreed to drop that proposal because of the difficulties it involved for other delegations. That left one essential proposal, namely, the inclusion of air transport among the means of transport defined in the draft proposal submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction in 1973 in document A/AC.138/93 (A/9021 and Corr.1 and 3, vol. II, p. 16). The consequential omission of references to bilateral and multilateral treaties on air transport had also been retained. Furthermore, the sponsors had made it clear in the revision that only civil, or non-military, air transport was involved.

23. Provision I of Informal Working Paper No. 9, which was taken from the original six-Power draft submitted to the seabed Committee, had no definition of means of transport. On the face of it, that trend would cover air transport, but his delegation noted that the reflection of trends did not preclude subsequent drafting refinements which might well reinstate the full text of the 1973 proposal. The fact that it was intended to exclude such means of transport was, however, reflected in the

last paragraph of provision IV, which maintained the superiority of existing air transport agreements over the rights of free access and transit to and from the sea. The sponsors simply wished to restate their conviction that access to the sea was a special right which could not be subordinated to a régime devised for more general rights of transit by scheduled air services.

24. The sponsors therefore believed that the trend evidenced by the revision of document A/CONF.62/C.2/L.45 could be reflected in Informal Working Paper No. 9 by inserting under provision IV an alternative B to the existing single provision, which would then become alternative A. The text of alternative B would be identical to the existing provision except for the deletion of the third paragraph. That alternative was a matter of substance and not merely of form, and the sponsors therefore requested that it be shown as a trend.

25. Mr. WISNOEMOERTI (Indonesia), introducing document A/CONF.62/C.2/L.67, said that in describing the purpose and basic elements of the concept of an archipelagic State, his delegation had always stressed the importance of the concept of maintaining and safeguarding the political unity and the territorial integrity of archipelagic States, of which Indonesia was one. It was in that light that the draft article should be construed. While his delegation was aware of the fact that the main trends relating to that item had been revised twice, it hoped that the officers of the Committee would be able to take the draft article into account.

26. Mr. ARAIM (Iraq), introducing documents A/CONF.62/C.2/L.71 and Add.1, said that article 1 stressed the vital question of freedom of navigation through straits customarily used for international navigation and connecting two parts of the high seas. A most vital element of the draft was the emphasis placed on the high seas, whether they were open seas or semi-enclosed seas. There were States bordering on semi-enclosed seas that were part of the high seas, and those States had no access to other parts of the high seas except through straits. Thus, freedom of navigation in the semi-enclosed seas was necessary for the coastal States and the world community as a whole.

27. His delegation had previously stated, both in plenary meetings and in the Committees, that in semi-enclosed seas all coastal States should have equal rights with respect to the living resources of the area. They should co-operate through regional arrangements for the conservation and exploitation of those living resources and in order to combat and control marine pollution and to preserve the marine environment.

28. The draft contained, in article 5, a definition of semi-enclosed seas which constituted part of the high seas. There were three elements which should form the basis for that definition: the semi-enclosed sea should be an inland sea; it should be surrounded by two or more States; and it should be a corridor of the high seas between States.

29. His delegation believed that any area of the sea which was beyond the 12-nautical-mile zone and the internal waters of a State should be regarded as part of the high seas.

30. Mr. PARSI (Iran) said that the draft articles in document A/CONF.62/C.2/L.72 had been submitted in order to assist the Committee in formulating the emerging trends on item 17, concerning enclosed and semi-enclosed seas. It was preliminary in nature and his delegation was open to suggestions that would help to produce a more comprehensive text.

31. The term "enclosed sea" as defined in article 1, paragraph (a), should not be confused with the term "closed sea". An enclosed sea was not a fully closed sea such as the Caspian Sea or the Aral Sea, which had no outlets to the open oceans. It was, instead, a small body of inland water, such as the Persian Gulf and the Baltic Sea, which had at least one outlet to the open sea. The term should therefore be used in the strictest

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

sense and only in reference to small bodies of water such as those he had mentioned.

32. The term "semi-enclosed sea" as defined in article 1, paragraph (b), could be used in a broad sense to cover larger sea basins along the margins of the main ocean basins, more or less enclosed by a land mass—whether continental or insular—and with one or more narrow outlets to the oceans. Examples of that category of seas were the Caribbean Sea and the Andaman Sea. There were a great number of enclosed or semi-enclosed seas, gulfs and bays throughout the world, and some—like the Gulf of St. Lawrence, the Gulf of California, the Kara Sea, Hudson Bay and the Java-Flores-Banda group—were bordered by a single State. Others, such as the Sea of Okhotsk, the East China Sea, the South China Sea, the Mediterranean, the Celebes Sea, the Persian Gulf, the Red Sea, the Black Sea and the Baltic Sea, were surrounded by two or more States. It was that latter category of enclosed and semi-enclosed seas, and particularly the smaller ones bordered by several States, that presented the most acute problems; and those problems could not be solved by global norms only. About one-half of the countries participating in the Conference bordered on or were located in one or more enclosed or semi-enclosed seas. Many of those seas faced serious problems, among which were pollution and the management of living resources. Those problems could not be resolved by general rules applicable to open oceans; instead, a special legal régime should be recognized for those seas. It was to that end that article 2 of the draft had been proposed.

33. The Secretary-General of the Inter-Governmental Maritime Consultative Organization (IMCO) had stated at the 22nd plenary meeting of the Conference that a new and important feature of IMCO's work on marine pollution was the concept of the special areas established under the 1973 International Convention for the Prevention of Pollution from Ships as being particularly vulnerable to pollution and regulated by special provisions. He had also said that where necessary, additional provisions for such areas could also be formulated on a regional basis. Article 3 of the draft sought to establish, in the

future convention on the law of the sea, additional power and jurisdiction for the coastal States of an enclosed or semi-enclosed sea to adopt preventive and restrictive measures under regional arrangements regarding the uses of those seas. One aspect of such restrictive measures should be directed at the preservation of the marine resources. The living resources of an enclosed or semi-enclosed sea were limited and vulnerable to over-exploitation and should therefore be managed and exploited solely by the coastal States or under the authorization of the coastal States concerned.

34. Owing to the special characteristics of enclosed and semi-enclosed seas, scientific research should not be conducted there unless specifically authorized by the coastal States concerned, as provided for in article 4 of the draft.

35. His delegation wished to emphasize that the concept of enclosed or semi-enclosed seas had been introduced and supported with a view to establishing special legal status for those seas in terms of empowering the coastal States to adopt, under regional arrangements, additional protective measures to safeguard their environmental, economic and social interests against abuses of the seas. There was a need for peace, co-operation and harmony among all nations in their activities relating to the ocean space, particularly with respect to enclosed or semi-enclosed seas, and his delegation hoped that the Conference would succeed in contributing to that end.

36. Mr. McLOUGHLIN (Fiji), introducing document A/CONF.62/C.2/L.69, said that it was intended to define the term "high seas". The existing definition in the 1958 Convention did not reflect the trend with respect to archipelagic States and waters and it should therefore be amended. The definition was intended to ensure that archipelagic waters would not be considered part of the high seas.

37. Mr. ABBADI (Deputy Secretary of the Committee) announced that Colombia, Guyana and Morocco had become sponsors of documents A/CONF.62/C.2/L.66, 42/Rev.1 and 16, respectively.

The meeting rose at 11.55 a.m.

44th meeting

Tuesday, 27 August 1974, at 10.50 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Introduction of draft proposals (*concluded*)

1. Mr. KAZEMI (Iran) said that, despite his two interventions on the question of the continental shelf, the trend to which his delegation subscribed had not been reflected in provision XIII of the formulation of main trends (Informal Working Paper No. 3/Rev.2) which had been prepared on that subject. Since the Chairman had ruled that all new proposals must be submitted to the Committee in writing, his delegation was constrained to submit the draft article in document A/CONF.62/C.2/L.84. It stipulated that the sovereign rights of the coastal State over its continental shelf were exclusive and that revenues derived from the exploitation of the natural resources of the continental shelf should not be subject to any revenue-sharing.

2. Although it was already too late to include the Iranian draft article in Informal Working Paper No. 3/Rev.2, his delegation hoped that a way could be found to include it in the final consolidated document the Committee intended to produce, since the draft article he had just submitted represented a

main trend supported by many delegations, including Canada and Chile.

3. The CHAIRMAN explained that it would be difficult if not impossible to meet the request made by the representative of Iran, owing to the fact that the Committee had decided to limit the number of revisions of the informal working papers to two. The contemplated consolidated document would therefore contain the second revision of all informal working papers. The consolidated document should be considered as a tool designed simply to give an idea of what had been said and done at the current session of the Conference. Those proposals made by delegations after the second revision of the informal working papers would of course become part of the documentation of the Committee which could then be taken up again at any moment at the next session of the Conference. The summary records of the Committee's meetings would also reflect such proposals. Furthermore the enumeration of trends in the informal working papers was not exclusive and did not imply that there were no other trends.

4. Mr. WARIOBA (United Republic of Tanzania), introducing document A/CONF.62/C.2/L.82, said it would be incorrect to say he was speaking on behalf of all the sponsors, since they had had no time to consult on the introduction of those draft articles to the Committee. The views he would express, therefore, were mainly those of his own delegation.

5. The sponsors of that document had been pressed for time in preparing it and it should therefore be regarded as a provisional draft. Revisions would be made and issued in due course. Nevertheless the document was an embodiment of the basic views of its sponsors on the question of the economic zone.

6. Article 1 recognized the right of the coastal State to establish an exclusive economic zone beyond its territorial sea.

7. Article 2 provided for the sovereignty of the coastal State over the living and non-living resources of the zone and its sovereign rights for the purpose of regulation, control, exploration, exploitation, protection and preservation of such resources. No other State had any right to the resources of the exclusive economic zone, with the sole exception of the land-locked and other geographically disadvantaged States referred to in article 6.

8. Article 3 recognized the exclusive jurisdiction of the coastal State for the purposes of control, regulation and preservation of the marine environment, control, authorization and regulation of scientific research, and control and regulation of customs and fiscal matters related to economic activities in the zone.

9. Article 4 established the exclusive right of the coastal State to make and enforce regulations in a number of domains.

10. Articles 2, 3 and 4 had been conceived to give effect to the basic unity of the economic zone. As defined in the draft articles, the régime of the economic zone was intended to replace any fishery zones, the contiguous zone and the continental shelf.

11. Article 5, while recognizing the traditional freedoms of navigation, overflight and laying of submarine cables and pipelines, ensured that in the future they would be regulated freedoms.

12. Article 6 was the most important in the draft. Paragraph 1 acknowledged the right of developing land-locked and other geographically disadvantaged States to explore the living resources of the exclusive economic zone of neighbouring States. Paragraph 2 defined the scope of that right and paragraph 3 the modalities of its exercise.

13. The essence of article 8 was to define a method of delimitation between adjacent and opposite States. An amendment to that article had been inadvertently left out and would appear in a future revision of the document.

14. Article 9 stipulated that the activities of the coastal State in its economic zone had to be carried out exclusively for peaceful purposes.

15. Article 10 prohibited States from constructing, maintaining, deploying or operating any installations or devices, military or otherwise, in the exclusive economic zone of any other State without its express consent.

16. Article 11, which dealt with the situation of peoples not yet fully independent, was not complete: it would be revised, and another article dealing with areas under colonial domination which were not susceptible of becoming independent, such as rocks and islets, would be added later to preclude States with such possessions far from their main territory from benefiting from the provisions of the economic zone in respect of such rocks and islets.

17. Mr. ABDEL HAMID (Egypt), introducing the draft article on the economic and contiguous zone in document A/CONF.62/C.2/L.78, said that Honduras and Saudi Arabia had decided to join in sponsoring the draft. The intention of

the draft was to maintain the practice under current international law which had proved its utility for many coastal States. The text of paragraphs (a) and (b) of the draft article was taken from article 24 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.¹ The outer limits of the economic zone had not yet been established by the Conference, and the reference to those limits had therefore been left blank in the draft. He requested that the draft article should be included in the informal working paper on the economic zone and the contiguous zone.

18. Mr. KAZEMI (Iran) suggested that, since the draft article in document A/CONF.62/C.2/L.84 could not be included in Informal Working Paper No. 3/Rev.2, it should be included in the second revision of Informal Working Paper No. 4 which had not yet been issued. It could be inserted as Formula B of Provision XXXIII under item 6.7.3, Sovereign rights over natural resources, of Informal Working Paper No. 4/Rev.1.

19. The CHAIRMAN thanked the representative of Iran for his co-operation and said that the draft article could be included in the second revision of Informal Working Paper No. 4.

20. Mr. OXMAN (United States of America), introducing the draft article proposed by his delegation concerning the régime of the high seas in document A/CONF.62/C.2/L.79, said the purpose of the draft article was to seek a moderate solution to the question of how the régime of the high seas would be affected by the new convention being prepared by the Conference. The régime of the high seas would clearly, at least in certain areas, not continue to exist in its current form. The concept of the economic zone marked a fundamental change in the international law applicable to the high seas. His delegation could not, however, agree that the economic zone should be assimilated to an area that was territorial in character simply by virtue of the fact that the coastal State would exercise substantial rights in that economic zone. It had considered many alternative solutions and the draft article was not the solution it would have preferred, but that solution seemed, after consultation with many delegations, the most promising approach to the question. Unlike the other 1958 Conventions on the law of the sea, the Convention on the High Seas² stated in the preamble that it was codification of international law. Although that did not, of course, mean that it could not be changed, he felt that, as many of the matters regulated in that Convention were not of fundamental importance to the Conference, it would be appropriate to expedite the Conference's work by incorporating in the new convention the provisions of the Convention on the High Seas as modified by new provisions governing the high seas, the economic zone, the continental shelf, the protection of the marine environment, scientific research and the international sea-bed area. Matters such as piracy, criminal and civil jurisdiction on ships and the duties of other States could, he felt, continue to be regulated by the provisions of the Geneva Convention. There were other international conventions applicable to the high seas, and care should be taken in the wording used in the draft articles on the high seas. He hoped that the draft article in document A/CONF.62/C.2/L.79 would be considered in the spirit of neutrality in which it had been submitted.

21. Introducing the draft article on fisheries management in document A/CONF.62/C.2/L.80, he noted that paragraph 1 provided for a flexible approach to management arrangements recommending co-operation among States through fisheries management agreements or multilateral fisheries organizations; it also provided for recourse to the Food and Agriculture Organization of the United Nations if the States concerned could not establish a fisheries organization. The primary thrust

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

² *Ibid.*, vol. 450, p. 82.

of the provision was to place responsibility for co-operation on the States concerned. Paragraph 2 dealt with the duty of States to conserve the living resources beyond the economic zone. He agreed with those who maintained that the conservation duty of the coastal State in the economic zone and of other States beyond the economic zone was the same and in that connexion he referred to the proposal on the economic zone submitted by his delegation in document A/CONF.62/C.2/L.47. Paragraph 3 dealt with certain provisions in areas within and beyond the economic zone with respect to anadromous species and highly migratory species. His delegation had already stated its views on the management of such species.

22. He requested that the formulation in paragraph 27 (a) of document A/CONF.62/C.2/L.47, which had been supported by several delegations, should be included in the informal working paper on the continental shelf.

23. The CHAIRMAN said that no further proposals could be included in the informal working paper on the continental shelf as the second revision had already been published.

24. Mr. SALLAH (Gambia) announced that his delegation would join in sponsoring document A/CONF.62/C.2/L.82.

25. Mr. BEESLEY (Canada), commenting on his delegation's working paper dealing with anadromous species (A/CONF.62/C.2/L.81), said that the paper did not contain any proposal as to the kind of régime which should be estab-

lished for those species. Its purpose was to illustrate the peculiarities of the anadromous species which required special provisions in the future convention.

26. In submitting document A/CONF.62/C.2/L.83, his delegation was concerned with providing an exact definition of an international strait. The definition which had been worked out thus far left open the possibility that they might equally well be applied to canals. The Canadian definition therefore specified the natural character of international straits.

27. According to the Canadian definition, an international strait lay within the territorial sea of one or more States, since logically the question of a special régime for international straits would not even arise if such straits were situated within the high seas. It was also important to take into account when defining international straits the extent to which they had traditionally been used for international navigation, and a provision to that effect had been included in the Canadian definition.

28. Mr. ABBADI (Deputy Secretary of the Committee) announced that Swaziland had withdrawn its sponsorship of document A/CONF.62/C.2/L.82; Malaysia and Yemen had requested to be added to the list of sponsors of document A/CONF.62/C.2/L.16; and Honduras and Saudi Arabia wished to join the sponsors of document A/CONF.62/C.2/L.78.

The meeting rose at 11.35 a.m.

45th meeting

Wednesday, 28 August 1974, at 11 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Consideration of recent draft proposals

1. The CHAIRMAN invited delegations to comment on recent proposals and draft articles submitted to the Committee.

2. Mr. WISNOEMOERTI (Indonesia), in preliminary comments on document A/CONF.62/C.2/L.63, said that Indonesia was prepared to consider and discuss, with immediately adjacent neighbouring countries, the problem of traditional interests claimed by them in the archipelagic waters. Consultations to that effect had in fact already taken place between the Indonesian Government and the Governments of such neighbouring countries.

3. His delegation had difficulty with the first draft article, for the following reasons: first, because the provision was applicable to all areas which constituted archipelagic waters and the territorial sea, over which the archipelagic State had sovereignty; secondly, it placed the archipelagic State under the obligation to give special consideration to the interests and needs of its neighbours, without regard to whether those interests and needs were traditional, legitimate or reasonable; thirdly, it imposed an obligation on the archipelagic State to enter into an agreement with any neighbouring State at the request of the latter; fourthly, the draft article did not qualify which neighbouring country was entitled to accommodation by the archipelagic State. The omission of the element of adjacency in that connexion would create difficulties for the archipelagic State; finally, the elements of reciprocity and equality included in the draft article in order to accommodate the interests of neighbouring countries with respect to the living resources of the archipelagic waters and the territorial sea might create problems for the archipelagic State.

4. The second draft article needed clarification. For example, his delegation wondered what was meant by the words "sole

benefit". It also wondered what types of ships had to be accorded the right of passage through the archipelagic waters outside the designated sea lanes.

5. His Government, in a spirit of good neighbourliness and regional co-operation, was prepared to continue consultations with the Governments of its neighbours, including Thailand, in order to seek a just solution to the problem.

6. Mr. NITTI (Italy), referring to proposals on the régime of islands, said that the 1958 Geneva Conventions had provided a simple and radical solution to the problem of the régime of waters, soil and subsoil of the sea adjacent to islands. Article 10 of the Convention on the Territorial Sea and the Contiguous Zone¹ and article 1 of the Convention on the Continental Shelf² laid down the principle that islands should be assimilated to other territories of the State. Furthermore, the first of those proposals included a definition broad enough to include all natural land extensions which remained uncovered at high tide.

7. With respect to the problem of the delimitation of the ocean space between States, no difference had been established by the Geneva Conventions regarding islands and the Conventions therefore applied to them. Islands should be treated like any other territory of the State, the equidistant line being, in principle, the equitable demarcation line.

8. In the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, some delegations had been in favour of a revision of the system adopted by the Geneva Conventions. Proposals had been advanced with a view to classifying islands into various categories

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

² *Ibid.*, vol. 499, p. 312.

because of their different situations. His delegation had already indicated at the 40th meeting the reasons why it believed that islands should not be deprived of their territorial sea, their continental shelf or their future economic zone. In any event, it could not accept any suggestion aimed at depriving islands of their ocean space or even calling into question their legal status by imposing abstract formulae incompatible with the principles of international law, which required that all elements that constituted the territory of a State should have the same rights and which ensured respect for a State's sovereignty and territorial integrity.

9. The proposals which were aimed at modifying the legitimate rights of islands with respect to the delimitation of maritime areas between adjacent or opposite States seemed to have been submitted by States which had delimitation problems of a bilateral nature with other neighbouring States. That had led some of them to lose sight of the universal nature of the Conference. Those circumstances should be taken into account when the proposals were being considered.

10. Mr. VALENCIA RODRIGUEZ (Ecuador), referring to documents A/CONF.62/C.2/L.47 and 57, said that Ecuador, which had a 200-mile territorial sea over which it exercised full sovereignty, held that all the living and non-living resources in that zone were under its national jurisdiction. That affirmation should not be interpreted to mean that Ecuador would not take part in international activity to promote research, conservation and development of the resources. The law of the sea could be codified only on the basis of the legitimate rights of the coastal State and, when appropriate, of the international community. Any attempts to justify rights of third States over the living resources of the coastal State's seas were clearly intended to facilitate plunder by the fishing Powers which, in the past, had profited from the riches of the sea without regard for the food requirements and other needs of the peoples of the coastal State or for the under-utilization of marine resources. The great Powers were exploiting fish resources with little concern for scientific research and even less for the conservation of species, and were merely seeking to obtain maximum profits from those resources without taking into consideration the economic and social needs of developing countries—all that on the pretext of protecting the over-all interests of the international community.

11. It was not a matter of limiting the catch according to the capacity of the coastal State. If the coastal State had full sovereignty over the resources of its seas, it would be able to feed its people and develop its industries without prejudice to third countries being able to fish, and benefit from, the remaining available resources under the regulations of the coastal State. Thus, the coastal State would be able to fulfil its responsibility to the international community without allowing itself to be victimized by what were tantamount to flagrant acts of piracy. No attempt to whittle down the rights of the coastal State within its territorial sea could be in accordance with justice. Such attempts would, on the contrary, not only run counter to the development of third world countries, but would be incompatible with the maintenance of peace, friendship and co-operation.

12. Ecuador was firmly opposed to any claim that would infringe its rights over all the species in its 200-mile territorial sea. Nor could it accept that the basis for the organization of the fisheries régime should be the so-called division of species whereby some would be termed "international" simply because of their migratory habits. It was true that highly migratory species, such as the tuna, while in international waters should come under the jurisdiction of the International Sea-Bed Authority. However, it was also true that they should come under the sovereignty of a State when they entered that State's waters and should be fished under standards established by that coastal State, which would take into account relevant recommendations of international bodies. The fish in the territorial

sea were under the indisputable sovereignty of the coastal State and while international co-operation was necessary—and indeed it was necessary for the conservation and development of species and their utilization first for the benefit of coastal States and then of third States in conformity with coastal State regulations—it should not take precedence over or supersede sovereign rights.

13. Mr. YANGO (Philippines) said that his delegation appreciated the fact that the proposal contained in document A/CONF.62/C.2/L.67 recognized and accepted the concept of historic waters. His delegation also supported that concept and had submitted proposals to the Committee (A/CONF.62/C.2/L.24/Rev.1) on that subject.

14. His delegation had introduced a similar proposal in the sea-bed Committee (A/9021 and Corr.1 and 3, vol. III, sect. 35), and had stated clearly that the Philippines exercised and would continue to exercise sovereignty over historic waters where the United States of America and Spain had previously exercised sovereignty over a long period, without prejudice to arrangements or agreements which his Government might freely enter into in special circumstances. His delegation continued to adhere to that position.

15. Mr. TUNCEL (Turkey) said that together with the delegation of Tunisia, his delegation had taken the initiative in the sea-bed Committee in presenting proposals concerning delimitation of the ocean space and the régime of islands which had met with a negative reaction from other delegations. However, during the current session many delegations had referred to those subjects in the course of the general debate. He hoped that Governments would maintain their interest in the matter between sessions.

16. Earlier in the meeting, the representative of Italy had confirmed the views of his delegation with regard to the régime of islands. His statement contained some original ideas which the Turkish delegation would consider before the next session. The representative of Italy had referred to the predominance of bilateral rather than international agreements in the case of islands and had stated that as the Geneva Conventions did not mention special circumstances, islands should be treated as part of the national territory of a State. Realities dictated the need for bilateral agreements which were envisaged elsewhere in the Geneva Conventions. He hoped that the Italian delegation would reconsider its position with regard to the future régime of islands.

17. Mr. ANDERSEN (Iceland) requested the Secretary to ensure that sufficient copies of the documents containing consolidated texts were made available to delegations, and called on the representative of the Food and Agriculture Organization of the United Nations to request that organization to provide a revised version of the document on the limits and status of the territorial sea, exclusive fishing zones, fishery conservation zones and the continental shelf. Such a document would be a useful basis for the future work of the Committee.

18. The CHAIRMAN took note of those two requests by the representative of Iceland.

19. Mr. ARIAS SCHREIBER (Peru) said that his delegation had been particularly interested in the proposals submitted by 17 African countries on the exclusive economic zone (A/CONF.62/C.2/L.82). Although his delegation had adopted a different position, it would take note of the valuable elements which had been included in those draft articles, and would study them further at the next session of the Conference. In the meantime, he wished to make a few preliminary remarks.

20. His delegation considered that the definition of the concept of the exclusive economic zone in article 1 of that document should mention that the zone was contiguous to the high seas or international sea. Bearing in mind that the 200-mile exclusive economic zone would in most cases include the whole of the continental shelf, his delegation considered that in article

2 it was essential to adopt the formulation used in the Convention on the Continental Shelf and to include the concept of sovereignty over the sea, the sea-bed and subsoil thereof for the purpose of regulating the exploration and exploitation of the renewable and non-renewable resources and for the protection and conservation of the living resources. It was important to reproduce that wording in order to preserve intact a right which was already recognized with regard to the continental shelf since, as the representative of the United Republic of Tanzania had stated, sovereignty applied not to a resource but to the space in which the resource was found.

21. As the future convention would remain in force for a considerable period of time, he expressed the view that articles 3 and 4 should contain provisions concerning the regulation of other economic uses of the seas and the exercise of "the residual rights of the coastal State" to protect interests related to the purposes cited in the articles from possible uses and abuses of the sea.

22. Referring to article 5, he drew the attention of the sponsors to the fact that the régime of freedom of navigation, overflight and the laying of cables and submarine pipelines, as contained in that article, did not mention the duty of ships in transit through the exclusive economic zone to behave in a peaceful manner and to abstain from activities which might endanger the coastal State, such as exercises or practice with weapons or explosives, the launching or taking on board of military devices, the embarkation or disembarkation of persons or materials without the consent of the coastal State or any act of propaganda, espionage or interference with communications systems, or any other activity not directly related to transit. While recognizing the right of ships of other States to free transit through the economic zone, provisions should be included to ensure that such ships complied with corresponding obligations in respect of the economic interests of the coastal State and that transit was for peaceful purposes only. While the powers of the coastal State should not be as extensive as those it held under the régime of innocent passage, some of the elements of that régime should be included as obligations of the transit State. His delegation considered that it was necessary to distinguish between the régime of innocent passage, applicable in an area in proximity to the coast, the régime of free transit applicable from the seaward limit of that area to the 200-mile limit and the régime of freedom of navigation and overflight applicable in the international sea.

23. Finally, with regard to article 9, his delegation considered that all activities by other States in the economic zone, including scientific research, and not merely those relating to the exploration and exploitation of resources, should be conducted for peaceful purposes only. That article could not be intended to prevent the coastal State, within its exclusive economic zone, from carrying out activities necessary to its security, including naval manoeuvres or exercises, but rather to prevent other States from carrying out such activities in that zone.

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

24. Mr. CEAUSU (Romania) observed that the meeting had been arranged to allow delegations to comment on recently

introduced proposals. Yet, contrary to the agreed procedure, one delegation had taken advantage of the occasion to reopen the debate on the régime of islands, citing the 1958 Geneva Conventions in support of its general position. It had therefore placed itself in a privileged position, since other delegations would not be able to reply at the current session. In any event, the main purpose of the Conference was to establish a new law of the sea based on equity and acceptable to all States, and not to comment on the provisions of the 1958 Geneva Conventions, some of whose provisions were manifestly unfair.

25. The CHAIRMAN said that he could do no more than appeal to delegations to show discretion and not to revert to issues which had already been discussed; he could not prevent them from making any observations they regarded as relevant.

26. Mr. ANDERSON (United Kingdom) observed that the proposals in documents A/CONF.62/C.2/L.62 and 75 dealt *inter alia* with the delimitation of the continental shelf and the economic zone between adjacent and opposite States and put forward the concept of applying equitable criteria for the purpose of delimiting the continental shelf in the case of islands. The sponsors claimed that the application of such criteria would not be an innovation since equity constituted the fundamental rule of international law in the matter of delimitation. His delegation's position in that respect was similar to that of the Italian delegation. The United Kingdom was a party to the 1958 Geneva Conventions on the Territorial Sea and the Contiguous Zone and on the Continental Shelf. It would be recalled that article 6 of the latter Convention specified three criteria for delimiting the boundaries of the continental shelf, without stating that islands should be treated as a special case. The existing law, as set forth in that Convention, remained in force as between States parties throughout the deliberations of the Conference, until it was superseded. Proposals such as those contained in documents A/CONF.62/C.2/L.62 and 74 could be regarded as proposals *de lege ferenda*, not *lex lata*. Accordingly, they were not relevant to existing questions of delimitation under consideration currently and in the coming months.

27. Mr. NITTI (Italy) said that his delegation had not intended to reopen the general discussion on islands, but rather to prepare the way for reaching a constructive solution to the problem of the delimitation of the marine space of islands at the following session. When his delegation had stated its preference for the rules of the Geneva Conventions with regard to the delimitation of marine space, it had had in mind the whole Geneva system, including the agreement among the parties and the special circumstances. Thus, the only equitable solution was the equidistance method, provided that it took account of the specific circumstances.

28. Mr. MANGAL (Afghanistan), speaking on a point of order, said that if it was the Committee's wish to reopen a general discussion, his delegation would also like to make its position clear. However, it felt that it was not an appropriate time for any delegation to go into the details of complex issues.

The meeting rose at 11.55 a.m.

46th meeting

Wednesday, 28 August 1974, at 4.50 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Documentation

1. The CHAIRMAN said that the final versions of Informal Working Papers Nos. 1–13 were not yet available in all working languages. It was hoped, however, that they would be circulated to all delegations by 29 August at the latest.
2. He understood that it was the consensus of the Committee that the informal working papers should be incorporated into a single document with an index, a general introduction and explanatory notes.¹

It was so decided.

3. The CHAIRMAN said that it would not be possible to issue the consolidated document at the Conference, but it would be available through the normal channels in New York in September and would be sent to the delegations which were not Members of the United Nations.

Statement on the work of the Committee

4. Mr. NANDAN (Rapporteur) said that the statement on the work of the Second Committee (A/CONF.62/C.2/L.85) reflected the decision by the Conference to prepare a concise, factual and non-controversial statement of the work of each of the Main Committees. It did not attempt to deal with the substance of the issues before the Committee or to record the views expressed on them.

5. In order to reflect the decision taken by the Committee at the beginning of the meeting, the following paragraph would be included at the end of section IV:

“The Committee at its 46th meeting on 28 August 1974 decided to consolidate the 13 informal working papers into a single working document, which will form a basis for its future work. This document is contained in appendix I.”

6. The other two appendices referred to in section VII of document A/CONF.62/C.2/L.85 would be inserted after the close of the session. The list of documents would show the sponsor, title and symbol of each document submitted. The index to the summary records would refer for each meeting to the appropriate summary records, agenda item and list of speakers participating in the discussion.
7. Details such as the number of meetings would be inserted at the end of the session.
8. In the preparation of the statement, he had not been able to consult with as many delegations as he would have wished, but he was grateful to the members of the Committee who had given him many helpful suggestions and comments.
9. Mr. WARIOBA (United Republic of Tanzania) said that the decision to prepare the kind of statement now before the Committee had been taken at an unofficial meeting of the plenary Conference at which his delegation had not been able to give its views. He wished to place on record a formal reservation to the effect that the statement did not reflect what had been done at Caracas. Delegations had not come to Caracas to prepare a report on an agenda, the organization of work or documentation, a report which devoted less than a page to the 10 weeks of serious work. The Committee and the Conference should give the world a detailed account of what had been achieved, showing that progress had been made towards agree-

ment. The statement gave the impression that the Conference had been a failure, which was not the case.

10. Mr. ZEGERS (Chile) and Mr. TREDINNICK (Bolivia) endorsed the comments made by the representative of the United Republic of Tanzania and entered formal reservations about the statement.

11. Mr. KNOKE (Federal Republic of Germany) said that his delegation did not share the pessimistic view which had been expressed about the statement. He quoted section VI, which stated that the Committee had completed an essential phase of its work and had made significant progress. The pessimistic delegations should bring that point to the attention of the public.

12. The CHAIRMAN said that it would not be in order for the Committee to reopen a debate on the decision taken in the plenary, with which the Rapporteur in preparing the statement had complied. He suggested that the Committee should take note of the statement on its work.

It was so decided.

13. The CHAIRMAN said that there were a number of personal comments he wished to make about the work of the Committee.

14. The Second Committee had been given the task of considering some of the most complex and controversial issues of the Conference, a task rendered more difficult by the fact that less progress had been made in the preparatory work on the items involved than on those allocated to the other Main Committees. The approach adopted to overcome the lag had been useful because the discussions had provided a better understanding of the interests and aspirations of the participating States. The main trends that had emerged in the form of proposals submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and at the Conference itself had been summarized in 13 informal working papers. Those working papers, most of which had reached their final version, were the collective work of the Committee and would be consolidated in a single text. Together with the various proposals submitted and the summary records, they provided an over-all picture of the work of the Committee at the session. With the limitations and reservations to be indicated in the general introduction and with the explanatory notes, the document faithfully reflected the main positions on questions of substance. The document should serve as a reference and also as a basis and starting-point for the future work of the Committee. It would be senseless to repeat the process that had brought the Committee to that stage.

15. It was unfortunate that time had allowed a second reading only of the paper relating to agenda item 2, on the territorial sea, in the examination of items regrouped in accordance with the degree of affinity between them. There was an obvious need for formal and informal conversations and negotiations at all levels in the interval before the next session so as to reduce the number of alternative texts of draft articles. He had abandoned the idea of undertaking the task himself out of deference to some delegations that had felt such a step might be premature and might compromise the success of future work.

16. Some of the results of the work of the Committee could not be reduced to figures or reflected adequately in records, reports or other documents. Although no decision on substan-

¹ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. III, document A/CONF.62/L.8/Rev.1, annex II, appendix I.

tive issues had been taken at the session, and not a single article of the future convention had been adopted, the participating States knew perfectly well which positions enjoyed support and which had not made headway. Despite the fact that the paper summing up the main trends did not indicate the support they commanded, it was easy for anyone who had followed the Committee's work closely to discern the outline of the future convention. Each State had established its position in general terms, thereby laying the foundation for negotiation based on an objective and realistic evaluation of the relative strength of the different opinions. The idea of a territorial sea of 12 miles and exclusive economic zone beyond the territorial sea up to a total maximum distance of 200 miles was the keystone of the compromise solution favoured by the majority of States participating in the Conference, although acceptance of the idea was of course dependent on the satisfactory resolution of other issues, such as passage through straits used for international navigation, the outermost limit of the continental shelf and the aspirations of the land-locked and other geographically disadvantaged countries, and there were still differences of opinion over the nature and characteristics of the concept of the exclusive economic zone. Substantial progress had been made on all the issues involved and the foundation had been laid for negotiations during the inter-session period and at the next session of the Conference.

17. The fundamental reason why the Second Committee had not achieved all that had been hoped was that the bases necessary for arriving at specific agreements on important and complex issues did not exist. The solution sought required a slow process of reflection and study. Much headway had been made at Caracas, and the Second Committee had worked soberly and constructively.

18. Mr. TELLO (Mexico) made a formal request for the substantive part of the Chairman's statement to be reproduced as an annex to document A/CONF.62/C.2/L.85.

19. Mr. GALINDO POHL (El Salvador), speaking on behalf of the meetings of the Latin American States, said that the Caracas session would be seen as a decisive step in the search for a new law of the sea. What had been achieved in Caracas would be the foundation for the work of the Geneva session. The records of the session did not show all that had been done; the informal work had been extremely useful. There was every reason to be optimistic about the outcome of the Conference.

20. Mr. PANUPONG (Thailand), speaking on behalf of the group of Asian States, said that the work of the whole Conference depended on the work done in the Second Committee. The Asian countries were confident about the future work of the Conference.

21. Mr. ROUX (France), speaking as Chairman of the group of Western European and other States, and also on behalf of the European Economic Community, said that the Committee had had to deal with the more complex and delicate issues of the Conference. Moreover, there had been less preparatory work on its agenda than on those of the other two Committees. It was gratifying that the Committee had succeeded in overcoming those handicaps and had made definite progress.

22. Mr. ABDEL HAMID (Egypt), speaking on behalf of the group of African States, said that the delegations of those countries were satisfied that the Committee was pursuing the right course for successful negotiations leading to a new order in the international law of the sea.

23. Mr. PISK (Czechoslovakia), speaking on behalf of the group of Eastern European States, said that the Committee had made positive progress on nearly all the issues on its agenda. It now had a set of documents on the basis of which progress could be made at the next session.

24. Mr. Cissé (Senegal) endorsed the comments of the Egyptian representative. The African countries were satisfied that a sound basis had been laid for the next session.

25. Mr. TARCICI (Yemen), speaking on behalf of the group of Arab States, said that it was particularly gratifying that the Chairman of the Committee came from a country which had much in common with them—especially a warm climate and oil.

26. Mr. ROSENNE (Israel) said that although the results of the Committee's work might not fully meet the Chairman's hopes and expectations, they should not be under-estimated. The Committee had overcome all its initial disadvantages and had prepared the basis for continuing its work.

27. Mr. STEVENSON (United States of America) said that the Committee was to be congratulated on having transformed a mass of draft articles into a series of clear and rational working papers which would give Governments a true picture of the alternative convention texts. His delegation hoped to sign the convention in Caracas the following summer.

28. Mr. BRANKOVIĆ (Yugoslavia) said that he wished to join in the general congratulations to the Chairman and officers of the Committee and to the Secretariat.

29. Mr. DIALLO (Guinea) expressed concern at a report on the radio that more than 150 countries represented at the Conference had already opted for the 12-mile territorial sea and the economic zone. The Chairman had made a comment to the same effect in his informal statement. He did not know the basis for the information, and in any case the Chairman's statement, being a personal one, should not be appended to document A/CONF.62/C.2/L.85.

30. The facts were that the 200-mile territorial zone was supported by more than 20 African and Latin American countries and it was hoped that the figure would be more than a hundred by the next session. A committee of African, Asian and Latin American countries had been formed that day under the chairmanship of Ecuador. Those third world countries understood that in fact the economic zone, of which they had expected so much, was meaningless. The only alternative was a 200-mile territorial zone. They were ready to co-operate, but not to support a system which would mortgage their national territory. Some African countries were prepared to sell themselves for dollars. The true African countries were the revolutionary ones, the countries of tomorrow, which supported the 200-mile territorial zone.

31. The CHAIRMAN said that press or radio reports should not be taken as gospel. His statement was a personal one and in no way engaged the Committee.

32. Mr. VALENCIA RODRIGUEZ (Ecuador) strongly endorsed the views expressed by the representative of Guinea with regard to the growing trend in favour of a territorial sea of 200 miles and also with regard to the inappropriateness of annexing the Chairman's statement to document A/CONF.62/C.2/L.85.

33. Mr. ZEGERS (Chile) proposed, in order to avoid conflict, that the Chairman's statement should be issued as a separate document of the Committee.

34. Mr. Cissé (Senegal), speaking in his capacity as Chairman of the African group, said that the Heads of State and Government of the Organization of African Unity had not yet made any definitive pronouncement on the breadth of the territorial sea. The OAU would have to wait and see what kind of régime for the economic zone was likely before being able to formulate a final position on the territorial sea of 200 miles.

35. His country for its part was willing to accept the 12-mile territorial sea on the condition that the economic zone was not stripped of all meaning.

36. Mr. ARIAS SCHREIBER (Peru) wondered whether the Chairman's statement was an accurate reflection of the work of the Committee, especially in the light of the statements which had just been made. Apparently the African countries had not reached a specific agreement on the question of the economic

zone and there was still a division of opinions in the Committee on that item. The case was not yet closed.

37. Any régime which did not provide for the sovereign rights of the coastal State in its economic zone would be far removed from the original intentions of the authors of that concept and would leave no other alternative but a territorial sea of 200 miles. He respected the Chairman's right to an opinion which differed from his own but, as far as he was concerned, the Chairman's comments on the economic zone and territorial sea were subject to many qualifications.

38. Mr. NJENGA (Kenya), supported by Mr. ARAIM (Iraq), said that the Chairman had been careful to point out that his statement consisted of his personal observations. Therefore, issuing it as an official text of the Committee would not prejudice the position of any delegation with regard to the territorial sea or the economic zone. The Rapporteur's statement on the work of the Committee was really only a skeleton report and without the Chairman's statement many delegations would have trouble following the debate which had taken place in the Committee. The Chairman's statement should be reproduced as a formal document of the Committee and in the event that any objections were raised his delegation would insist

upon the application of the relevant provisions of the rules of procedure.

39. The CHAIRMAN acknowledged that a formal proposal had been made by the representative of Kenya and underlined that he had made his earlier statement in his personal capacity as Chairman of the Committee. If there were no objections, he would take it that the proposal was adopted.

*It was so decided.**

Completion of the Committee's work

40. The CHAIRMAN thanked the representatives of the regional groups for their tributes to him and to the officers of the Committee. He expressed his own appreciation to the Committee's officers and the personnel of the Secretariat for their contribution to the work of the Conference. On behalf of the Government of Venezuela he thanked all those who had expressed their appreciation of the hospitality of the Venezuelan people and Government.

The meeting rose at 6.35 p.m.

*The full text of the Chairman's statement has been issued as document A/CONF.62/C.2/L.86.

THIRD COMMITTEE

1st TO 17th MEETINGS

[The agenda and the officers of the Committee appear in Volume III of the Official Records of the Third Conference on the Law of the Sea, document A/CONF.62/L.8/Rev.1, annex III.]

THIRD COMMITTEE

1st meeting

Thursday, 4 July 1974, at 12.10 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Organization of work

1. Mr. VAZQUEZ CARRIZOSA (Colombia), announced that his country had been elected to the vice-chairmanship of the Committee and that Mr. Diego Uribe Vargas, a senator and professor of law and Mr. Alvaro Escallón Villa, a senator and economist, had been appointed to assume that office in turn. The appointment of two such eminent persons was indicative of the great importance which Colombia attached to the work of the Committee.
2. The CHAIRMAN thanked the members of the Committee for having elected him to the chairmanship and said that he and the other officers would carry out their functions to the best of their ability.
3. The Third Committee constituted in a way a continuation of Sub-Committee III of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction; that Sub-Committee had been established in 1971 and its terms of reference in relation to the Third Committee were to be found in the work programme based on the list of items and subjects approved by the sea-bed Committee in 1973.
4. The Sub-Committee's work programme had consisted of the following: Preservation of the marine environment (including the sea-bed); Elimination and prevention of pollution of the marine environment (including the sea-bed); Scientific research concerning the marine environment (including the sea-bed); Development and transfer of technology; Other matters. The Sub-Committee had concluded its general discussion on the items falling within its terms of reference during the summer session at Geneva in 1973. In July 1972 the Sub-Committee had established a working group on marine pollution, of which Mr. Vallarta of Mexico had been Chairman. That group had held several meetings in 1972 and 1973 and had submitted to the Sub-Committee a report which appeared in the report of the sea-bed Committee on its work in 1973 (A/9021 and Corr.1 and 3, vol. I, p. 84). The working group had been able to prepare a number of draft articles on various questions. Several of those articles had been adopted without any reservations, while in the case of others a number of variants had been submitted. In March 1973 the Sub-Committee had established a working group on scientific research with Mr. Olszowka of Poland as its Chairman. Having less time at its disposal, that working group had not been able to go as far in its work as had the working group on marine pollution, but it had submitted some draft articles, which also appeared in the report in question (*ibid.*, pp. 102-105). He sincerely hoped that the Conference would be able to benefit from the accomplishments of the two working groups. On behalf of the Committee, he expressed his sincere thanks to Mr. van der Essen of Belgium, Chairman of Sub-Committee III of the sea-bed Committee, for the way in which he had guided the Sub-Committee's work; he also wished to thank Mr. Vallarta and Mr. Olszowka for their contributions to the achievements of the working groups.
5. Turning to the question of the organization of the Committee's work, he informed the members of certain conclusions reached following the consultations held during the week with the regional groups. It should be noted that those conclusions were merely suggestions submitted by way of information, for the consultations were continuing and the Committee did not have to take any immediate decision on the matter.
6. The Third Committee's agenda for the current session and for any future sessions would be that which appeared in document A/CONF.62/29, items 12 to 14, and related matters. With regard to the structure of the Committee, he said that he had held lengthy consultations with the members of the regional groups and he would like to put before the Committee the different trends which seemed to have emerged.
7. A majority of the participants seemed to be in favour of establishing two working groups, one on marine pollution, which would be Working Group 1, and the other on scientific research, which would be Working Group 2. As to the third item which the Committee was to deal with, namely, the development and transfer of technology, he suggested that it should be studied by Working Group 2, in view of the close relationship between the two subjects. However, if the Committee should, subsequently feel that a separate working group needed to be established for that purpose, that possibility was by no means excluded. Those groups would work unofficially and would be open to all members of the Committee. Also, no meetings, whether of the plenary Committee, Working Group 1 or Working Group 2, would be held simultaneously. He suggested those arrangements so as to enable delegations having only a small number of representatives to attend all meetings. Each of the working groups would have a chairman and, if necessary, a rapporteur. The working groups would meet every day and their chairmen would report once a week to the Committee to enable the latter to follow the development of the work officially. During the consultations the names of Mr. Vallarta of Mexico and Mr. Hela of Finland had been put forward for the chairmanships of Working Groups 1 and 2 respectively and those of Mr. Mbote of Kenya and Mr. Olszowka of Poland to exercise the functions of rapporteur.
8. Another solution would be not to set up working groups but to have the plenary Committee meet, either officially, with summary records, or unofficially, as a working group of the whole, as in the case of the Second Committee. That procedure would make it possible to avoid fragmenting the deliberations on the subject.
9. With regard to methods of work, he observed that as some delegations had not yet had the opportunity to express their views they would doubtless wish to do so in the course of a general statement, but he thought that the number of speakers and the length of their statements should be limited. It would be advisable to adopt the most flexible approach possible and combine official and unofficial meetings of the Committee, of working groups and of any small *ad hoc* groups of sponsors of proposals which might share similar viewpoints or might be

seeking to reconcile divergent points of view. Informal consultations should also be held if necessary. The officers and the plenary Committee would be responsible for co-ordinating and harmonizing the work of the different groups. As to documentation, he referred the members of the Committee to volume I of the report of the sea-bed Committee and drew attention to all the available documents and the proposals submitted by delegations and specialized agencies.

10. Lastly, he invited the members of the Committee to express their opinions and said that it was not imperative to take a decision immediately; however, it should be noted that consideration of questions of substance relevant to the mandate of the Third Committee was to begin the following week.

11. Mr. GALINDO POHL (El Salvador), speaking on behalf of the participants in the meetings of the Latin American States attending the Third United Nations Conference on the Law of the Sea, congratulated the Chairman on his election. The Latin American countries had considered the various suggestions which the Chairman had just mentioned and had reaffirmed their desire to facilitate the work of the Committee with regard both to procedure and to matters of substance.

12. As to the structure of the Committee's work, they felt that the Third Committee, like the Second Committee, should hold either official or unofficial meetings, but that in either case the Chairman of the Committee should preside over the deliberations. He would not enumerate at that stage all the considerations justifying that arrangement, for consultations should be continued.

13. Moreover, the Latin American countries were keenly interested in the transfer of technology, regardless of the structure to be decided upon. The question was of paramount importance for the developing countries and it should be in the forefront of the work not only of the Conference but also of all United Nations bodies.

14. The participants in the meetings of the Latin American States undertook to co-operate fully with the officers of the Committee and were confident that a consensus could be reached.

15. Mr. CISSE (Senegal), speaking on behalf of the group of African States, congratulated the Chairman on his election and welcomed Mr. Vázquez Carrizosa, Minister for External Relations of Colombia, whose presence was an indication of the great importance which that country attached to questions relating to pollution of the seas. He added that the African group was particularly satisfied with the excellent relations of friendship and co-operation existing between Africa and Colombia.

16. At the meeting which it had just held, the group of African States had advocated the solution adopted by the First and Second Committees, partly because the delegations of the African countries were in many cases very small and would have difficulty in attending several meetings at the same time, and partly because the process of establishing new working groups always raised problems of geographical distribution with respect to the election of chairmen and rapporteurs. Thus the most practical solution would be to have a single working group. That would, of course, entail a considerable amount of work for the Chairman, but he could ask the three Vice-Chairmen to assist him. The informal consultations—which were necessary—should not lead to the setting up of *ad hoc* groups.

17. Moreover, the group of African States would like all meetings of the Committee, whether official or unofficial, to be announced in the *Journal*.

18. Mr. MANNER (Finland), speaking on behalf of the group of Western European and other States, congratulated the Chairman on his election and assured him of the readiness of all members of the group to co-operate with him. Concerning the various proposals which had been mentioned, some

members of the group had referred to the need to establish two working groups, open to all members of the Committee, to deal, one with pollution, the other with scientific research, for two entirely different questions were involved. Such appeared to be the attitude of a majority of the members of the group of Western European and other States, but consultations should continue.

19. Mr. PINTO (Sri Lanka), speaking on behalf of the group of Asian States, congratulated the Chairman and other officers on their election. The Asian group assured the officers of the Committee of its support. Having been informed of the proposals made concerning the structure of the Committee, he, in his capacity as Chairman of the Asian group, had consulted the various delegations which were members of the group. With a few exceptions they apparently did not wish to modify in any way the method of work used in Sub-Committee III of the sea-bed Committee. However, when the group of Asian States had met, a majority had favoured a structure similar to that of the Second Committee, while pointing out that no criticism of the working groups of the Sub-Committee or of their officers was involved. The main reason for that development was that most delegations were very small and not properly equipped to deal with several technical questions at the same time. However, it should be said that such was the opinion expressed at that stage and it involved no commitment for the future; the Asian countries did not wish to exclude the possibility of establishing working groups at a later date. On the other hand, if the majority of members of the Committee did not share their view, they would like to have the opportunity of expressing their ideas again on the question.

20. As the Chairman had pointed out in his introductory statement, at that stage only suggestions were involved, and there was no need for any immediate decision; it would be better to hold further consultations first.

21. Mr. BEESLEY (Canada) congratulated the Chairman on his election and said he favoured the structure which had been established in Sub-Committee III. After hearing the points of view which had been expressed, he felt that considerable further consultation would be necessary. Certainly the danger of having too many meetings which the smaller delegations would find it difficult to attend should be avoided. However, the views which had been advanced almost amounted to arguments against the very existence of the Third Committee. The Committee would inevitably have to deal with a number of technical questions, while the Second Committee would be concerned more with political matters. For that reason it was not necessarily advisable to adopt the same structure in both cases.

22. He thought it desirable as a first step to establish a working group on pollution, similar to that of Sub-Committee III, the chairman of which would be the representative of a Latin American country. A second working group, to deal with scientific research, would be presided over by the Chairman of the Committee, or one of its Vice-Chairman. Naturally the two working groups should not meet at the same time. Such an arrangement would show whether it was necessary to appoint a chairman for the second working group, or whether a third group would have to be established to study questions of the transfer of technology. The various points to be examined varied considerably, but all were technical. They would be no less technical if no working groups were established. The only solution in that case would be to abolish the Committee.

23. Mr. MOORE (United States of America) congratulated the Chairman on his election and said he thought that informal discussions would be necessary in order to reconcile the different views which had been expressed. However, it was essential to bear in mind that the object of the Conference was not to conduct a lengthy exchange of views, but to conclude a convention and to that end to draw up draft articles. His delegation was ready to discuss a possible Caracas convention. The Third Committee would have to decide on the most appro-

appropriate structure to help it formulate articles on pollution, scientific research and the transfer of technology. In addition, members of the Committee were fortunate enough to have had an effective structure in Sub-Committee III; it was an institutional framework which should enable the Committee to work rapidly.

24. Mr. MIRCEA (Romania) speaking on behalf of the group of Eastern European States, congratulated the Chairman on his election. He said he did not think it should be difficult to adopt the proposals which had been made regarding working methods, consultations and documentation. Concerning the structure, the attitude of the group of Eastern

European States was very flexible. In principle it would favour the first suggestion, namely to create working groups open to all members of the Committee.

25. The CHAIRMAN thanked the delegations which had assured him of their support. Consultations would continue on the basis of the views expressed and of the first suggestions which had been made.

26. Mr. CISSE (Senegal) noted that at a forthcoming meeting of the Group of 77 the countries of Latin America, Africa and Asia would seek to co-ordinate their views.

The meeting rose at 1.30 p.m.

2nd meeting

Thursday, 11 July 1974, at 3.50 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Organization of work

1. The CHAIRMAN said he wished to place before the Committee for its consideration a number of general points of agreement that had emerged from extensive consultations that he had held since the previous meeting.

2. First, the Committee would hold both official and unofficial meetings.

3. Secondly, during the following week the Committee would hold only official meetings in order, *inter alia*, to review the work of the working groups of Sub-Committee III of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, especially for the benefit of those delegations that had not been members of the latter, and to enable delegations to make general statements on the three items allocated to the Third Committee. For the first three days, delegations should concentrate on item 12, concerning the preservation of the marine environment and, for the following two days, on items 13, concerning scientific research, and 14, concerning development and transfer of technology. He hoped that their statements would be short and that only those delegations that had not made statements in the sea-bed Committee would speak. After all general statements had been made, the Committee would hold official meetings once a week, or when the Chairman deemed it appropriate, to enable delegations to submit proposals formally and to hear progress reports on the unofficial meetings.

4. Thirdly, the Committee would, in the course of its unofficial meetings, consider alternately item 12 at one meeting and items 13 and 14 at the following meeting. Those meetings would be on a daily basis. He suggested that the Committee, when considering item 12 in unofficial meetings, should be under the chairmanship of Mr. Vallarta of Mexico, who had been proposed by the Latin American countries and supported by the various regional groups. During the consideration of items 13 and 14, he himself would preside over the unofficial meetings until he found it feasible to designate a chairman, in consultation with the regional groups.

5. Fourthly, informal *ad hoc* working groups might occasionally be established to consider specific items, and might be under the chairmanship of persons other than the regular chairmen of the unofficial meetings. Such persons would be appointed by the Chairman of the Third Committee in consultation with the regional groups.

6. Fifthly, all of the proposals which had been submitted to Sub-Committee III of the sea-bed Committee, together with those submitted during the current session of the Conference,

would be placed before the Third Committee. It should consider all texts prepared by the working groups of Sub-Committee III, including proposals that had not been dealt with by that Sub-Committee. The main function of the unofficial meetings would be to negotiate on substantive issues, while most of the drafting work could be undertaken by the *ad hoc* working groups if and when they were set up.

7. Sixthly, it had been suggested that the Secretariat should bring up to date the unofficial comparative table of proposals submitted by Working Group 2 of Sub-Committee III, giving special attention to those proposals that had not been included in the original tables and to new proposals submitted during the current session of the Conference. Those amended tables, which the Secretariat was urged to produce as soon as possible, would be for use during the unofficial meetings.

8. Mr. CISSE (Senegal), speaking on behalf of the group of African States, said that the members of the group with which he had had an opportunity to consult generally approved of the Chairman's suggestions.

9. Mr. GAMBOA (Chile) said that, although his delegation opposed the establishment of working groups, it was ready to support the Chairman's compromise formula. However, in order to avoid creating difficulties for smaller delegations, none of the meetings should be held simultaneously. Furthermore, all meetings should be provided with interpretation.

10. The CHAIRMAN assured the representative of Chile that his wishes would be complied with.

11. Mr. RODRIGUEZ (Venezuela) said that his delegation generally approved of the Chairman's suggestions. However, he hoped that, in order to meet the needs of the smaller delegations, the suggested *ad hoc* working groups would not hold many meetings.

12. The CHAIRMAN gave his assurance that the *ad hoc* working groups would be established only occasionally, as and when the Committee deemed it necessary. They would be established for the purpose of bringing together either the sponsors of similar proposals or the sponsors of different proposals with a view to increasing the area of common ground. Such a procedure was designed to assist all delegations, large and small.

13. Mr. KORCHEVSKY (Byelorussian Soviet Socialist Republic), speaking on behalf of the group of Eastern European States, supported the Chairman's suggestions.

14. Mr. MANNER (Finland), speaking on behalf of the group of Western European and other States, said that, al-

though the group would have preferred the establishment of two separate working groups, it was ready, in a spirit of co-operation, to accept in their general outline the Chairman's suggestions concerning the organization of work. Since the group had last met, however, certain changes had been made in the suggested organization of work which the group as a whole had not yet had the opportunity to consider or approve. His delegation, for its part, could accept the plan, provided it was sufficiently flexible to ensure that all available expertise would be used when necessary.

15. The CHAIRMAN said that the solution relating to the selection of a chairman to preside over the unofficial meetings had been reached after prolonged discussions, during which the Latin American countries had suggested that Mr. Vallarta might preside over the unofficial meetings of the Committee when item 12 was being considered. He hoped that it would soon be possible to designate a chairman to preside over the Committee for the consideration in unofficial meetings of items 13 and 14.

16. Mr. PAPAGEORGIOU (Greece) said that his delegation had always believed that the questions of pollution and scientific research should be considered separately. He agreed with Chairman's suggestion relating to the selection of a chairman to preside over the unofficial meetings, as well as that relating to documentation.

17. Mr. MBOTE (Kenya) said that his delegation could accept the Chairman's suggestions. However, in view of the extreme importance of the questions of scientific research and the development and transfer of technology, he hoped that the problem of the selection of a chairman to preside over the Committee during its consideration of those items in unofficial meetings would be resolved as soon as possible, and certainly before it began considering them in detail. He also wished to emphasize the need to avoid a proliferation of *ad hoc* working groups.

18. Mr. YTURRIAGA BARBERAN (Spain) supported the Chairman's suggestions with regard to the Committee's organization of work.

19. He thought that both official and unofficial meetings of the Committee should be announced in the *Journal*.

20. In order to avoid possible duplication of work, arrangements should be made for joint meetings with experts from the First and Second Committees.

21. The CHAIRMAN said that announcements about both kinds of meeting would be made in the *Journal*.

22. The co-ordination of the Committee's work with that of other bodies could be achieved through regular meetings of the Chairmen of the various Committees, through the General Committee, through plenary meetings and eventually through the Drafting Committee. The matter of duplication was actually covered by rule 17 of the rules of procedure.

23. Mr. MOORE (United States of America), Mr. HASSAN (Sudan), and Mr. HUSSAIN (Pakistan) endorsed the Chairman's suggestions.

24. Mr. DE ALWIS (Sri Lanka), speaking on behalf of the Asian group, said he wished to express the group's appreciation of the Chairman's untiring efforts to plan the organization of work in such a way as to ensure the effective and expeditious consideration of the items allocated to the Committee. The group was in general agreement with the Chairman's proposals and noted in particular that the task of the Committee was essentially to negotiate rather than to act as a preparatory or drafting committee. It favoured the proposal that the Committee should work through unofficial meetings—as opposed to working groups—to consider alternately item 12 at one meeting and items 13 and 14 at another, under two different chairmen. However, it did not exclude the possibility of establishing small working parties or task forces to consider specific issues in order to expedite the Committee's work. It agreed

with the Chairman's suggestion concerning the documentation to be considered.

25. Miss MARIANI (France) accepted the Chairman's suggestions and said she hoped that the problem of the chairmanship of the unofficial meetings on scientific research and the transfer of technology could be rapidly solved.

26. Mr. DAHMOUCHE (Algeria) said that he too agreed with the Chairman's suggestions. He thought that the reports of the *ad hoc* groups should be made first of all to an unofficial meeting of the Committee.

27. The CHAIRMAN replied that the *ad hoc* groups might, if necessary, report to an official meeting of the Committee. The officers of the Committee would ensure that such groups did not proliferate.

28. Mr. KOVALEV (Union of Soviet Socialist Republics) approved the Chairman's suggestions on the organization of work, documentation, and avoidance of duplication.

29. The CHAIRMAN said he took it that the Committee approved the suggestions he had made.

It was so decided.

30. The CHAIRMAN said that, in order to assist the Committee in its work in official meetings the following week he would summarize the preparatory work that had been done on the three items allocated to the Committee in accordance with the decisions taken at the 15th plenary meeting.

31. With regard to item 12, concerning preservation of the marine environment, he said that Working Group 2 of Sub-Committee III of the sea-bed Committee—the Working Group on Marine Pollution—had, at its March 1973 session in New York and its July-August 1973 session at Geneva, examined and prepared a number of texts and alternatives on the basis of formal proposals submitted to Sub-Committee III. Those texts were reproduced in the report of the sea-bed Committee to the twenty-eighth session of the General Assembly (A/9021 and Corr.1 and 3, vol. I, pp. 86–100). They were concerned with the following matters: basic obligations to preserve and protect the marine environment; particular obligations to prevent pollution of the marine environment from any source and the obligation to prevent damage from marine pollution; global and regional co-operation; technical assistance; monitoring; and standards. The Working Group had included in its report to the Sub-Committee a set of alternative texts submitted by Brazil which it had not been able to consider.

32. The Working Group had not been able to complete its consideration of those texts or examine other provisions in the formal draft proposals dealing with the following matters: definition of marine pollution, responsibility and liability, enforcement, immunities, freedom of the high seas, settlement of disputes, relationship to other treaties or conventions and international institutions. It had considered some aspects of those topics, but had not included texts directly relating to them in its report.

33. During the Committee's official meetings, members would be invited to speak on all matters raised, whether or not they had been considered by Sub-Committee III. There were various ways of proceeding, but he felt that it should concentrate on those items that Sub-Committee III had considered only partially or not at all. He hoped that its discussions would produce guidance for future work.

34. With regard to item 13, on scientific research, and item 14, on the development and transfer of technology, he said that Working Group 3 of Sub-Committee III of the sea-bed Committee—the Working Group on Marine Scientific Research and Transfer of Technology—had discussed matters relating to the definition and objectives of marine scientific research and the conduct, promotion and prerequisites of such research in the light of formal draft proposals submitted to Sub-Committee III. It had prepared alternative texts on those items, which appeared in the report of the sea-bed Committee

to the twenty-eighth session of the General Assembly (*ibid.*, pp. 103–105). It had not considered the following topics, which were covered in the formal proposals submitted to Sub-Committee III: consent, participation and obligations of coastal States; general conditions for the conduct of marine scientific research; international and regional co-operation for marine scientific research, including exchange and publication of scientific data; international institutions; status of scientific equipment in the marine environment; responsibility and liability; settlement of disputes; and obligations under the United Nations Charter and international treaties.

35. The Working Group had not been able to start consideration of the subject of the transfer of technology.

36. The preparatory work on scientific research and the transfer of technology had not progressed beyond its very early stages and the Committee would have to begin more or less at the beginning. The proposals, texts and alternatives would, however, provide a broad basis for discussion.

37. Mr. LEGAULT (Canada) said that two important items, concerning special measures by coastal States to prevent pollution in the light of geographical or ecological conditions and the zonal approach to the prevention of marine pollution, seemed to have been omitted from the Chairman's list of topics not examined or completed by the working groups of Sub-Committee III. He suggested that the two items, which had appeared in a number of proposals, including the working paper submitted by his own and several other delegations (A/AC.138/SC.III/L.56), should be added to the list of issues to be discussed by the Committee in official and unofficial meetings.

38. He supported the Chairman's suggestion that the Committee should concentrate on the items considered only partially or not at all by Sub-Committee III.

39. The CHAIRMAN said that, as he understood it, the two items referred to by the Canadian representative would be covered by other items, such as standards and enforcement.

40. Mr. LEGAULT (Canada) said his only concern was that the two issues should be considered separately and should be included among the items which had not been fully or partially considered; otherwise they would have lower priority.

41. Mr. BUSTANI (Brazil) suggested that the Committee should start by a second reading of the Geneva texts, with a view to narrowing differences. The Canadian representative's points could be included in the rereading of the texts on standards.

42. Mr. LEGAULT (Canada) said that if the Committee was going to identify issues not considered or completed, it would be logical to list separately the two issues he had mentioned.

43. Mr. KIRWAN (Ireland) said that the Chairman's lists were merely indicative and therefore not binding.

44. Mr. LEGAULT (Canada) remarked that an indicative list could not be helpful if it excluded two of the most important, controversial and difficult issues before the Committee.

45. Mr. JAIN (India) suggested that in the Committee's unofficial meetings representatives might be allowed to add or highlight issues which they felt had not been sufficiently emphasized in the lists.

46. Furthermore, if the work of the two working groups of Sub-Committee III was to be reviewed for the benefit of delegations which had not participated in the work of the sea-bed Committee, it would be better not to limit discussion to the items not fully or partially considered by the working groups, so that representatives of those delegations could comment on all issues.

47. The CHAIRMAN said that he wished to make it clear that there would be a flexible approach and that his lists of items were not intended to be preclusive or exhaustive. The Committee would consider all proposals submitted to it. He requested that proposals concerning subjects or issues to be discussed should be submitted to him in writing by Wednesday, 17 July, at the latest.

The meeting rose at 6.00 p.m.

3rd meeting

Monday, 15 July 1974, at 3.20 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Preservation of the marine environment

[*Agenda item 12*]

1. The CHAIRMAN invited members of the Committee to comment on the question of pollution. He appealed to them not to repeat general statements that had been made in plenary meetings.

2. Mr. BRAUNE (German Democratic Republic) said that since his delegation had not been represented on the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction, he would like to explain its position on the main questions before the Committee.

3. In the first place, it was essential for special attention to be paid to the prevention of marine pollution and the safeguarding of free maritime research in the framework of the general task of the Conference, namely, the codification and progressive development of the international law of the sea.

4. The problems of marine pollution were now of universal importance and the prevention of a further increase in marine pollution and the gradual reduction of the strain on the seas

were part of the fundamental task of maintaining and improving the natural conditions of life for the current and future generations.

5. It was natural that countries—especially those of Africa, Asia and Latin America—whose supply of animal proteins depended on fishing were concerned about preserving or re-establishing an ecological balance of the seas which would help them to solve their economic problems more rapidly. Combating pollution of the high seas and conducting marine research for peaceful purposes required the effective co-operation of all States. The existing climate of détente and the strengthening of international peace and security were conducive to the expansion of international co-operation in those important fields.

6. A number of bilateral, regional or specific agreements already existed for protecting the marine environment and others were being drawn up but the problem could really be solved only by a universal convention covering all fields. Different and piecemeal measures for coastal zones were of little use: internationally agreed standards were needed which would be universally implemented. The sea suffered pollution from a variety of

sources—land, ships and sea-bed activities—and it would be useless to close one source only. Moreover, protection of the marine environment could not be isolated from protection of the national environment.

7. His country, as a seafaring and coastal State, was party to a number of conventions, particularly those drawn up under the auspices of the Inter-Governmental Maritime Consultative Organization (IMCO), and the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area (see A/CONF.62/C.3/L.1), all of which should provide a sound basis for discussions at the Conference. There were still many gaps to be closed in existing legal regulations. To be comprehensive and effective, internationally agreed obligations should apply to the entire high sea beyond the territorial seas of up to 12 miles. Agreement should be sought on internationally valid norms and standards based on current findings in natural sciences, with a view to improving utilization of the sea's resources with the least possible damage and reducing existing or potential disturbances of the ecological system, and without restricting freedom of navigation or existing or future use of the sea.

8. Special attention should be paid to pollution of the sea from activities on the sea-bed—a threat to the marine environment that should not be underestimated. To that end internationally co-ordinated minimum standards should be established concerning the continental shelf under national jurisdiction by an appropriate body in co-operation with the United Nations Environment Programme (UNEP).

9. With regard to the ocean floor, the International Sea-Bed Authority should be responsible for setting up international regulations for the control of pollution resulting from exploration and utilization of the sea bottom.

10. Navigation, although not the main source of marine pollution, was of great importance to both coastal and flag States. With a view to protecting the marine environment, it would be useful if all coastal States applied the same international norms and standards within their territorial seas in respect of ships flying foreign flags. Without a uniform régime it would not be possible to achieve objectives in the common interest of all States. Separate regulations by individual coastal States for the innocent passage of foreign ships through their territorial sea or for free passage through straits—such as regulations on ship construction, design, equipment or crew—would seriously impede freedom of navigation and would not help to reduce marine pollution. What was needed was the uniform application of internationally agreed regulations, although the flag State should be allowed to fix additional regulations for the prevention and control of pollution caused by ships of its own flag. Close co-operation between coastal and flag States would be essential to enable the flag State to implement those standards effectively in respect of its own ships.

11. In the context of an agreement on effective measures for the protection of the marine environment, his delegation understood the freedom of the seas to include: solution of the problem of protection of the marine environment and extension of co-operation in maritime research; the right of all States to free navigation and other legitimate uses of the high sea on the basis of sovereign equality; effective co-operation of all States in the conservation, exploitation and just distribution of the resources of the sea: those resources should not be used by only a few States which had scientific, technical, economic or geographic advantages.

12. The fundamental questions of the law of the sea were interdependent and required a comprehensive solution.

13. Mr. BUHL (Denmark) said that his delegation's position had already been made known during the preparatory work in Sub-Committee III of the sea-bed Committee.

14. With regard to marine pollution, his delegation agreed with the main concepts of the articles on basic and particular

obligations prepared by Sub-Committee III (A/9021 and Corr.1 and 3, vol. I, pp. 86–88), namely; that States should take all necessary measures in accordance with their capabilities to prevent pollution of the marine environment from any source; and that in so doing States should guard against the effect of merely transferring damage or hazard from one area to another.

15. His delegation also agreed with the suggestion (*ibid.*, p. 89) that the convention should contain a provision to the effect that none of the agreed measures should derogate from the sovereign right of a State to exploit its own resources pursuant to its environmental policies and in accordance with its duty to protect and preserve the marine environment both in its own interests and in the interests of mankind as a whole.

16. His country agreed with the comprehensive approach advocated at previous sessions of the sea-bed Committee and considered that the task now was to formulate articles on marine pollution which would eventually form one chapter of a comprehensive convention on the law of the sea. General principles and obligations must be laid down for prevention and control of marine pollution and concerning the rights of flag, port and coastal States to make regulations, their areas of jurisdiction and their powers of enforcement.

17. The Declaration of the United Nations Conference on the Human Environment,¹ while not legally binding, placed wide obligations on States concerning steps to prevent pollution of the seas by substances liable to create hazards to human health, harm living resources and marine life, damage amenities or interfere with other legitimate uses of the sea; provision must now be made for the implementation of those obligations. The Stockholm Conference had adopted more concrete recommendations on such specific matters as action against ocean dumping, international monitoring programmes, combining world statistics on mining, production, processing, transport and the use of potential marine pollutants.

18. It remained to be seen whether the Conference was prepared to agree on detailed rules and standards on such specific issues as dumping and pollution from ships. Denmark had signed or ratified five treaties: the 1972 Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, the 1973 International Convention for the Prevention of Pollution from Ships, a western European Convention for the Prevention of Marine Pollution from Land-based Sources, completed in Paris in February 1974, and the March 1974 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area. The Helsinki Convention was the first multilateral treaty which took an over-all approach to the prevention and abatement of marine pollution. It covered all sources of pollution in the area, went further than any other existing treaty in respect of obligations prohibiting dumping and established an institutional and organizational framework which was of fundamental importance for the implementation of its provisions and the development of new rules.

19. He hoped that the standards and provisions in all those treaties would serve as a model for future international agreements.

20. Specific agreements on anti-pollution action should be worked out separately in co-operation with the appropriate specialized agencies and in certain cases on a regional basis. They should cover primarily the four main sources of pollution: marine pollution from land-based sources, pollution resulting from the exploration or exploitation of sea-bed resources, dumping, and pollution from ships.

21. Turning to the question of the enforcement of anti-pollution measures, he said that his country, as a seafaring

¹ Report of the United Nations Conference on the Human Environment (United Nations publication, Sales No. E.73.II.A.14), chap. I.

nation highly dependent upon foreign trade, was keenly interested in securing adequate international enforcement measures. It adhered primarily to the principle that the flag State alone should have authority to enforce jurisdiction over its vessels, especially with regard to their design, construction, equipment and manning.

22. While his delegation was ready to consider the principle of enforcement by the port State, it considered that the latter's authority must be limited to the enforcement of internationally agreed rules, and must not be based on national rules adopted by the port State. Enforcement measures taken by a port State, such as the boarding and inspection of a vessel, should generally be limited to the time when the vessel was in dock, and proceedings undertaken against a vessel should immediately be reported to the flag State.

23. The very nature of international navigation imposed a global approach to pollution from ships through international conventions elaborated in a technical forum and designed to ensure the preservation of the marine environment for the common good without detriment to international navigation. It was important to avoid a mosaic of possibly contradictory regulations elaborated by individual States.

24. With regard to earlier proposals to entrust coastal States with jurisdiction over a broad area adjacent to their coast beyond their territorial sea, Denmark agreed to the establishment of pollution zones, but took the view that internationally accepted rules, standards and procedures must remain the only valid source of such jurisdiction. They could be worked out within the relevant United Nations specialized agencies. The coastal State would also have a major role to play in cases where the flag State could not or would not enforce internationally agreed rules, as well as in cases of emergency.

25. In that connexion, the draft articles submitted by France in document A/AC.138/SC.III/L.46, and by the Netherlands in document A/AC.138/SC.III/L.48, represented a promising set of rules. Those submitted by France allowed the coastal State to take steps against acts of pollution which contravened the three principal global anti-pollution conventions, namely the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, of 1972, the International Convention for the Prevention of Pollution from Ships, of 1973, and the Convention for the Prevention of Pollution of the Sea by Oil, of 1954.

26. The application of regional agreements dealt with in article 5 of the French proposal needed further consideration. It was essential to reach a common understanding with regard to the enforcement of regionally agreed anti-pollution measures; they would discriminate against individuals and ships covered by such regional agreements if they set stricter standards than those contained in global arrangements.

27. As to specially vulnerable areas, such as the Baltic and the Mediterranean, and "virgin" areas, such as the Arctic, his delegation took the view that coastal States should also have the authority to enforce regional or national anti-pollution measures. Such measures must not be discriminatory and must remain within the strict limits of the objectives of internationally agreed anti-pollution conventions.

28. His delegation, for its part, would prefer such measures to be approved by a suitable international organ, and coastal States in those areas should be precluded from imposing additional national or regional requirements with regard to ship design and equipment for pollution control.

29. Mr. AL-HAMID (Iraq) suggested that a more appropriate rendering of the terms "marine pollution" and "marine environment" would be "water pollution" and "water environment", since many pollutants were brought to the sea via rivers. Pollution should be controlled at its source and, consequently, pollution in both internal waters and in the sea should be dealt with as a whole. National and international measures should be

integrated on the basis of well-established international standards.

30. Co-operation among States could be achieved on an international and regional basis through the appropriate specialized agencies which could play a leading role by undertaking scientific research and by promoting studies and the exchange of information on water pollution. The agencies could also render technical assistance to the developing countries by promoting local programmes of scientific research and training and the transfer of advanced technology.

31. States operating both individually and regionally must implement the internationally agreed measures.

32. Mr. PETHERBRIDGE (Australia) said that it was essential, as a very minimum, to produce texts on all subjects at the current session, even if they contained reservations or alternatives. Consequently, consideration should be given first to several topics which had not been considered in the sea-bed Committee, including the two important matters mentioned by the Canadian delegation at the preceding meeting. It was not necessary, however, to consider them in great depth at the current stage; what was needed was to elaborate texts reflecting the full spectrum of views, including total or partial reservations, on those remaining topics. The Committee would then be in a position to undertake a second reading of all topics, at which time it could re-examine the texts prepared by the sea-bed Committee, incorporate any additional ideas, and begin the task of negotiation.

33. Turning to the question of the zonal approach to the preservation of the marine environment, the importance of which had been emphasized by the Canadian and many other delegations, he said that the central issue was the nature and extent of the rights and obligations of States in relation to the preservation of the marine environment. The most important reason for the bewildering complexity of the subject was that no basic approach had yet been agreed upon. Some would rely entirely on internationally agreed regulations, enforced either by flag States or port States, or both. Others advocated—either instead of, or in addition to, such regulations—a zonal approach under which, within the 200-mile economic zone, coastal States should have the right to enforce international regulations supplemented by reasonable national regulations.

34. At the 1972 Stockholm Conference, a number of principles and recommendations² had been adopted which were relevant to the question of marine pollution in the context of the current Conference. Recommendation 86, for example, called on Governments to accept and implement available instruments on the control of the maritime sources of marine pollution, and to ensure that the provisions of such instruments were complied with by ships flying their flags and by ships operating in areas under their jurisdiction. Recommendation 92 called on Governments to endorse a number of specific principles as guiding concepts for the Conference on the Law of the Sea, and referred three additional principles on the rights of coastal States to the Conference for appropriate action.

35. The issue of jurisdiction had subsequently been reflected in the 1973 International Convention for the Prevention of Pollution from Ships, under article 4 of which any violation of the requirements of the Convention within the jurisdiction of any party to the Convention was prohibited. Furthermore, article 9 provided that the term "jurisdiction" must be construed in the light of international law in force at the time of application or interpretation of the Convention; it also provided that nothing in the Convention must prejudice the codification and development of the law of the sea by the Conference on the Law of the Sea, nor the claims and legal views of any State concerning the law of the sea and the nature and extent of coastal-State and flag-State jurisdiction.

²*Ibid.*, chaps. I and II.

36. Thus the issue of jurisdiction was squarely before the Conference. Australia favoured a zonal approach, under which a coastal State would have the right under international law to exercise effective anti-pollution control over ships on the high seas in a broad zone contiguous to its territorial sea. In document A/AC.138/SC.III/L.27 Australia had set out some principles under which the coastal State would be able to protect its marine environment without interfering unreasonably with shipping; there was a balance in those principles to which his delegation attached importance.
37. Some delegations had again raised in plenary meetings the alleged conflict between prevention of vessel-source pollution and freedom of navigation, implying that coastal States might act irresponsibly or that they had no interest in freedom of navigation. His country, as a major user of world shipping, took the view that that was not the case. Since foreign trade was a vital aspect of the economy of most coastal States, any capricious or unreasonable action on their part would risk a rise in freight rates and perhaps even the suspension of shipping services.
38. Allegations of irresponsibility could be directed from either side, but the Conference could not proceed on the basis that one side or another was going to act irresponsibly. The Conference must seek to formulate a law that would protect all reasonable interests; if it could not proceed on the basis that the law would be observed, its efforts would be pointless.
39. His delegation believed that, for effective control of vessel-source pollution, the fullest co-operation between shipping and coastal interests was essential. The total environment would be best protected if shipping was subject to internationally agreed regulations between all interested parties which flag States were obliged to enforce on their own vessels. But, in addition, coastal States must remain able to protect their own environment, including that of the economic zone for which they were responsible, and must therefore be able to enforce the internationally agreed regulations. Considerations of time, evidence and distance made local enforcement essential.
40. Existing regulations, however, might not always be adequate: the 1973 London Conference on Marine Pollution had itself recommended that intentional pollution be completely eliminated by the end of the decade, thus recognizing the need for stricter international regulations. Since, however, amendment procedures could be slow, the convention currently being drafted must provide for the right of a coastal State, where necessary, to act on its own. That possibility gave rise to difficulties, but they must be faced. Such unilateral action must be reasonable in the circumstances, with provision for appeal to machinery for the settlement of disputes.
41. For both normal and exceptional cases, a balance must be struck between, on the one hand, a coastal State's ability to protect its environment, including that of its economic zone and, on the other, safeguards against unreasonable interference with shipping. Those who gave so much emphasis to the problem of preventing unreasonable interference with shipping and international trade must be prepared to discuss seriously the interest of coastal States in a pollution zone.
42. U TUN MYAT (Burma) said that Burma had proclaimed in November 1968 a 12-mile territorial sea, measured from straight baselines drawn in accordance with the provisions of the 1958 Convention on the Territorial Sea and the Contiguous Zone.³ It supported the concept of an exclusive economic zone within which the coastal State would have the right to exercise exclusive economic jurisdiction over both renewable and non-renewable resources, and believed that the coastal State should also have jurisdiction over all activities including the control, conservation and regulation of the marine environment, both on the sea-bed and the subsoil, as well as in the superjacent waters.
43. Burma fully endorsed the principles contained in General Assembly resolution 2749 (XXV) and the doctrine of the common heritage of mankind. It supported the establishment of an international régime and machinery with comprehensive operational, regulatory and managing powers.
44. Burma believed that the quality and resources of its as yet unspoiled coastline should be protected for contemporary and future generations. It thus welcomed the general awakening of world opinion with respect to the dangers of marine pollution which had followed the 1967 *Torrey Canyon* disaster, and approved the Declaration of the United Nations Conference on the Human Environment.
45. His delegation believed that States must co-operate with each other and with competent international bodies, both global and regional, in taking measures to protect the marine environment. Due note would have to be taken of the standards that might be recommended by those international bodies in the formulation of national and municipal laws and regulations to provide adequate control and enforcement measures, although adequate latitude would have to be provided for in the case of the developing countries, which should employ the best practicable means to minimize the discharge of pollutants from all State's sources, both land and marine based, taking into account their economic and technical capabilities. That saving clause was not in defence of a committed fault or in anticipation of one in the future. Although Burma was developing its industrialization, it was essentially an agrarian country, and land-based pollution was not one of its problems. It did not intend to change that state of affairs but neither was it prepared to accept standards which might perhaps be beyond its economic and technical capabilities. None the less, technical assistance for achieving such standards would be welcome.
46. With respect to pollution from ships, Burma's small merchant navy was under strict instructions to abide by the local pollution regulations of the various ports and those recommended by IMCO at sea.
47. With regard to administration, his delegation felt that for marine pollution offences the existing flag administration alone might not be adequate to proceed against an offending ship and that some sort of coastal State and port State administration might have to be provided for in the future convention on the law of the sea.
48. As regards jurisdiction, his delegation believed that the municipal law of the coastal State would prevail on all marine pollution offences including, of course, ships caught *in flagrante*, in waters within a coastal State's jurisdiction. The establishment of exclusive economic zones would give States additional rights and obligations to control and preserve the marine environment of those zones. His delegation was inclined to agree that divergent pollution control standards between different pollution control zones would create difficulty and uncertainty for ships. Within such exclusive economic zones coastal States should therefore establish internationally agreed pollution control standards, which might be more stringent in especially sensitive areas.
49. With regard to the area beyond the limits of national jurisdiction, the resources of which had been declared the common heritage of mankind, his delegation believed that it was also the common responsibility of mankind to protect that area from harm arising out of exploration and exploitation of resources and other activities. Such responsibility should be exercised through the international machinery created for such activities, which should therefore have wide powers to ensure effective compliance of the standards it set.
50. Mr. RASHID (Bangladesh) said that because of the complexity of the problem of marine pollution, there were many possible legal measures to control it, but such control was beyond the capability of any one State or group of States. It

³United Nations, *Treaty Series*, vol. 516, p. 206.

called for concerted international action. Any legal instrument must take account of the source of pollution.

51. Bangladesh, with a coast over 1,000 miles long and heavy reliance on fishing, had an interest in protecting the marine environment adjacent to its coast. It supported the view that the coastal States should have responsibilities for taking appropriate measures to preserve and protect the marine environment, and indeed legislation had recently been passed in his country to that effect. However, States should take into account relevant internationally accepted standards so as to ensure proper harmonization between national and international measures. Care must also be taken that the activities carried out under national jurisdiction did not cause pollution damage to other States and to the marine environment as a whole. Moreover, States should take all possible measures to guard against transferring damage or hazards from one environment to another.

52. As far as scientific research was concerned Bangladesh, as a developing country, did not envisage that scientific research in the high seas should be arbitrarily restricted. It did, however, believe that the coastal States should be able to ensure at least four elements in the future legal framework, namely, the right of coastal States to have prior information or even authorization to undertake scientific research within its jurisdiction, to participate actively in research carried out in their areas of jurisdiction, to control and where necessary disallow such activities if they were against national security, and to have access to data and samples collected and to scientific results for effective publication and dissemination.

53. Mr. RASOLONDRAIBE (Madagascar) noted that certain important matters had not been made the subject of the texts produced by Sub-Committee III of the sea-bed Committee. Those matters included scientific research, the transfer of technology, the definition of marine pollution, responsibility for pollution, freedom of the high seas, relations with other international organizations with responsibilities for pollution, and international conventions.

54. His delegation, which had been a member of the sea-bed Committee, was convinced of the need to change the method of work employed. The Third Committee should concentrate on reaching agreement on general principles before formulating legal principles as such.

55. Since the idea of adopting "Caracas principles" had already been advanced, it might be useful for the Committee to deal with that matter as well.

56. As far as pollution was concerned, his delegation was in favour of an economic zone over which the coastal State had total sovereignty, and in which pollution would fall within the competence of that State.

57. His delegation was also in favour of an International Authority with wide powers and direct competence over pollution. That competence must now be defined and a solution found to the problem of pollutants crossing frontiers.

58. In Madagascar there was practically no pollution from land sources. Madagascar had a very small navy, and indeed its pollution problem was imported. It was a fact that the great maritime Powers were mainly responsible for marine pollution: hence countries such as Madagascar must have recourse to machinery to protect themselves from ships polluting their region and against negligence or *laissez faire* on the part of the flag States.

59. Madagascar had ratified the 1954 International Convention for the Prevention of Pollution of the Seas by Oil, but not the 1973 Convention for the Prevention of Pollution from Ships or the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil. He noted with interest that that Protocol extended the scope of the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, signed at Brussels in 1969, by confirming the right of coastal States to take such action on the high seas as might be necessary to avert, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by substances other than oil following an accident. Such a provision might well be adopted with respect to pollution resulting from negligence or non-compliance with international conventions.

60. The Committee's work would, moreover, be facilitated if agreement could be reached on the distribution of competences between national and international authorities, including the International Civil Aviation Organization (ICAO), IMCO and UNEP.

The meeting rose at 5.05 p.m.

4th meeting

Tuesday, 16 July 1974, at 3.25 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Preservation of the marine environment (*continued*)

[*Agenda item 12*]

1. Mr. COLLINS (Liberia) said that as a developing coastal State his country was fully aware of the problems of marine pollution, while appreciating the tremendous relative cost of anti-pollution measures. As a maritime State Liberia recognized the special responsibility of flag States to support and enforce the highest attainable standards for inclusion in multinational agreements to combat marine pollution.

2. Such pollution was no longer a local problem: it was a global threat, requiring truly international solutions. In dealing with it, unilateralism would be destructive. Nevertheless, Liberia did not exclude the concept of specially sensitive ecological areas of the oceans requiring special anti-pollution measures; such areas and the special measures to be taken must, however, be determined internationally.

3. Liberia was not opposed to the idea of coastal States being empowered to set standards in excess of the requirements of multinational agreements for all vessels traversing its internal waters, but thought that all parties to such agreements should be bound to impose no other or further requirements for vessels of other parties traversing the coastal State's territorial waters or entering its ports and harbours open to international maritime commerce.

4. Finally, Liberia was not opposed to the concept of a coastal or port State enforcing jurisdiction over marine pollution offences committed outside its territorial waters; but it did believe that the primary responsibility for enforcement lay with the flag State, and that coastal or port State jurisdiction should come into play only in cases when the flag State failed to take action within a reasonable time. If the flag State had in fact initiated action, no other action should be permitted unless and until it had been determined, according to the agreed mecha-

nism for international dispute settlement, that the flag State action was inadequate.

5. Considerable progress had been made in the last seven years on the problems of marine pollution, particularly by the Inter-Governmental Maritime Consultative Organization (IMCO), which had produced a series of international instruments on marine pollution by ships which Liberia had ratified. IMCO's record in that field clearly established it as the appropriate organization to deal with all matters relating to ship-generated marine pollution. He believed that it had the experience and capability to deal with other sources of marine pollution as well.

6. Mr. RAMADAN (Egypt), after outlining the sources of marine pollution and its effect on the marine environment, said that, although the knowledge of the toxicity levels of the various chemicals used in industry was far from adequate, currently available parameters should be accepted until they could be refined.

7. His country took the view that pollution control and preservation of the marine environment in areas under national jurisdiction were essentially the obligation of coastal States, which must enforce standards for sewage and industrial waste disposal by means of an approved system of monitoring. The convention to be drafted should include provisions on those issues along the lines of the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

8. On the question of pollution from ships, he stressed the importance of the 1973 International Convention for the Prevention of Pollution from Ships. Nevertheless, rapid development in ship design, sea transport techniques and navigation aids called for a review of the basis of liability for damage. A future convention must contain clear obligations for flag States and port States without unduly hampering shipping schedules.

9. With regard to the exploration and exploitation of sea-bed resources, the coastal State must be responsible for enforcing anti-pollution measures in waters within its national jurisdiction and, with the aid of modern technology, should ensure that any pollution or disturbances caused by sea-bed mining were kept to a minimum. Such questions could be studied by a competent scientific *ad hoc* committee, which could then make appropriate recommendations to be reflected in the convention.

10. Within the area of national jurisdiction, extending for a distance of 200 miles from the territorial sea, the coastal States must observe and enforce international standards, especially with regard to shipping and sea-bed mining. However, there was a need for special arrangements between coastal States whose area of national jurisdiction could not extend for 200 miles without overlapping, as in the case of certain closed and semi-closed seas. In such cases, his delegation advocated a buffer zone wherein strict anti-pollution measures would be jointly adopted by the States concerned. Special areas, such as straits, and related zones important from the point of view of fish mobility, should be subject to enforcement of the strictest pollution measures by coastal States.

11. His delegation also advocated the prevention of pollution from all sources by means of all scientific and legal means within the power of coastal States with regard to areas under their national jurisdiction. However, internationally agreed standards and obligations could serve as guidelines. His delegation supported co-operation between States of common interests in one geographical area for the purposes of pollution control, application of new technologies and warning of imminent dangers.

12. As to the exploitation of sea resources in areas within national jurisdiction, it was necessary to assess the intensity of pollution, and neighbouring States were entitled to be informed of countermeasures adopted, especially when such

States were located below sea currents. Accidents must be promptly reported to States in imminent danger from pollution. Countermeasures must be undertaken promptly, with the use of up-to-date methods and technology. Where a State could not cope with a situation, it should immediately call for help from both neighbouring countries and recognized international bodies, without regard to financial considerations.

13. On the question of a pollution control authority, his country considered that reliance on the relevant existing specialized agencies was feasible. It should be possible to achieve agreement with regard to co-ordination of programming and documentation, and perhaps monitoring.

14. Pollution control in the international zone should be the responsibility of an international body established for the purpose.

15. In conclusion, he emphasized the need to avoid a rigid approach in a matter having such a far-reaching impact.

16. Mr. LEGAULT (Canada), after reading out the statement of objectives endorsed by the United Nations Conference on the Human Environment held at Stockholm in 1972 and contained in its recommendation 92,¹ said that unanimous approval of the statement by all the Governments present at that Conference had been of great significance. It was the task of the Conference on the Law of the Sea to follow up that statement of objectives by establishing binding legal obligations that recognized the limited assimilative and regenerative capacities of the sea; devising management concepts for the marine environment to replace the laissez-faire attitude of the past; maintaining a unified and comprehensive approach to various kinds of environmental and resource management; and providing means for coastal States to pursue their particular interests and discharge their particular responsibilities in management and protection of the marine environment.

17. Both before and after the Stockholm Conference, Canada had advocated a "comprehensive approach" to the protection of the marine environment. That approach, which Canada had explained fully in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (See A/AC.138/SC.III/L.26 and 28) involved three elements: a broad range of national and international measures, with national measures relating particularly to land-based pollution; harmonization of such measures; and the assignment and co-ordination of functions of national and international agencies. Canada did not consider that a comprehensive approach required the adoption of a single treaty instrument dealing in detail with all aspects of marine pollution, but rather hoped that the Conference would approve an "umbrella" treaty which would, in general terms, establish the rights and obligations of States concerning the protection of the marine environment, affirm a commitment to develop and adhere to particular specialized treaties, give a common direction to the future development of international instruments and international measures, and fix uniform rules for such general problems as enforcement, compensation for damage and settlement of disputes.

18. A broad consensus around the comprehensive approach had emerged from the general proposals or draft treaty articles on marine pollution already submitted by the delegations of Australia, Kenya, Malta, Norway, the United States, the Soviet Union, Ecuador, El Salvador, Peru and Uruguay, and from the more specific proposals put forward by France, Japan, the Netherlands and Trinidad and Tobago. In particular, all of those proposals showed wide areas of similarity on important specific issues such as the obligation of States to protect the marine environment and to ensure that activities under their jurisdiction did not cause damage to other States;

¹See *Report of the United Nations Conference on the Human Environment* (United Nations publication, Sales No. E.73.II.A.14), chap. II.

and the need to take measures to prevent marine pollution from any source, to develop international standards and conventions covering all forms of marine pollution, to take into account international standards in adopting national measures, and to avoid transferring pollution from one area to another. There was also widespread agreement on the need to establish global and regional co-operation for the prevention of marine pollution; international arrangements concerning monitoring, minimization and abatement of marine pollution; better enforcement procedures in respect of pollution from vessels; better rules on liability and compensation for marine pollution damage; and, finally, technical assistance for developing States to permit them to meet their responsibilities in respect of protection of the marine environment.

19. He was confident that new proposals from other delegations would strengthen the already solid basis for agreement that had been established. The work of the Working Group on Marine Pollution of Sub-Committee III of the sea-bed Committee showed that generally acceptable texts could be arrived at on the basis of such broad agreement. The problems that Working Group had encountered in dealing with the broad area of "standards" had arisen from the fact that too many issues had been subsumed under one category. That was why his delegation had already suggested that the Third Committee should consider under separate headings the questions of special anti-pollution measures in particular geographical and ecological situations, and the basic zonal approach to the prevention of marine pollution.

20. One major area of difficulty still remaining related to the effect of differing levels of economic development on the duty to combat marine pollution. The Canadian view was that Principle 21 of the United Nations Declaration on the Human Environment² provided the basic elements for an accommodation on that point, by recognizing the sovereign right of States to exploit their own resources pursuant to their own environmental policies, subject to the limitation that activities under their jurisdiction should not cause damage to the environment of other States or areas beyond national jurisdiction. Since lesser developed States were equally susceptible to the effects of pollution and equally concerned with protecting the health of their environment and their people, his delegation believed that different levels of economic development were relevant not so much to the setting of environmental standards as to the extent to which such standards could be implemented at any given time. It had therefore advocated a functional, comprehensive approach which would include minimum international standards for the prevention of marine pollution, supplemented by special regional standards, and further supplemented by national measures, which were circumscribed strictly in so far as they related to ship-generated pollution.

21. A second major remaining difficulty related to the adoption of rules and standards for the prevention of ship-generated pollution. Canada agreed with the general view that international agreements on that subject were necessary in order to achieve the greatest possible uniformity. However, highly controversial issues arose from the view of some delegations that such rules and standards should be exclusively international. Those delegations argued that national measures adopted without prior international sanction and applied by a coastal State against foreign vessels could lead to a mosaic of uncoordinated and even conflicting legislation which could make international navigation virtually impossible. Canada and other countries had pointed out in reply that such an exclusively international approach would limit the existing sovereign rights of States to protect themselves against threats to their environmental integrity, a right which had been established as early as the Trail Smelter Arbitration between Canada and the United States in 1935. The United States, in fact,

was a country which still sought to preserve the right to protect its environment by unilateral action in respect of foreign vessels, and under the draft articles submitted by that country, States would continue to enjoy the right to set higher standards than those fixed by international conventions for vessels entering their ports, including standards for the design and construction of such vessels. That approach was incorporated into existing United States legislation, namely the Ports and Waterways Safety Act of 1972. Thus, if there was indeed a danger of conflicting regulations as to vessel-source pollution, that danger appeared to arise under the United States approach as much as it did under the approach allowing coastal States to adopt national measures in zones adjacent to their coasts. In practice, however, his delegation was convinced that no such danger need arise under either approach, any more than it had arisen under the existing situation, in which coastal States exercised sovereign rights in their ports and territorial waters.

22. The draft treaty articles submitted by the United Kingdom delegation (A/CONF.62/C.2/L.3) appeared to reflect a more extreme version of the exclusively international approach. They appeared to deprive coastal States not only of their right to protect their environment from the activities of foreign vessels in their territorial sea, but also of their right to deny such vessels entry to their ports on environmental or other grounds. That did not appear consistent with "modernization" of the concept of innocent passage, which Canada had advocated in the sea-bed Committee, and he hoped that the Conference would agree on a less restrictive approach.

23. Another drawback to the exclusively international approach was that there existed no universal law-making body whose decisions would be automatically and necessarily binding on States. The United States draft treaty articles sought to give the Inter-Governmental Maritime Consultative Organization the status of a universal lawmaker on ship-generated pollution, but that did not appear consistent with the fundamental legal principle that States could not be bound by any rule without their consent. IMCO did not have the super-agency status envisaged by the United States. A further difficulty was that it was impossible to foresee all the problems that rapidly developing technology might create, and it was extremely difficult for international standards to be developed quickly enough to respond to new situations.

24. An accommodation might be possible, however, perhaps along the lines of the encouraging statement by the Norwegian delegation at the 25th plenary meeting, which had suggested distinguishing coastal State rights in respect of discharges, dumping and traffic separation from rights in respect of ship construction, design equipment and manning. The latter rights had given rise to the greatest concern on the part of some States, and that concern, if valid, related to such rights whether they were exercised only in ports or in the territorial sea or adjacent areas. The solution to the problem lay not so much in restricting the exercise of coastal-State rights to particular areas of jurisdiction as in restricting their exercise to cases where they were strictly necessary, and ensuring that they were applied under appropriate safeguards on a non-discriminatory basis, in response to particular geographic, navigational or ecological situations not adequately covered by international rules and standards. That was the functional approach followed in Canada's draft articles (A/AC.138/SC.111/L.28), particularly its article IV. Ice-covered waters were an obvious example of the need for special measures, and other possible examples might include enclosed or semi-enclosed seas, congested traffic situations, and shallow or narrow channels. Thus, the question of measures for the prevention of marine pollution was intimately linked to the question of passage through straits. The right of passage must be assured, but must be subject not only to international regulation but also to the right of the coastal State to protect itself. Management principles were particularly needed in that area.

² *Ibid.*, chap. I.

25. A third major area of difficulty related to the enforcement of rules and standards for the prevention of ship-generated pollution. The 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and the 1973 International Convention for the Prevention of Pollution from Ships pointed the way to an accommodation by requiring the application of rules and standards not only by flag States but also by coastal States, thus breaking away from the traditional doctrine of exclusive flag-State jurisdiction. The same approach had been adopted in a number of proposals at the present Conference, including those of his own delegation, France and Japan. Those proposals would extend shared enforcement jurisdiction to areas beyond the territorial sea, although some countries still took the position that it should be restricted to territorial waters, or even not permitted at all. Both the Conventions he had referred to called upon the present Conference to settle the issue of the limits of enforcement jurisdiction. His delegation believed that if a State had the right to make national rules and standards it must have the right to enforce them on the same basis as international regulations.

26. The concept of port enforcement, whereby States would be entitled to enforce the provisions of international conventions against foreign vessels found in their ports irrespective of the area where the violation had occurred, had first been broached by Canada in the sea-bed Committee in 1971. Although it was not incorporated in Canada's draft treaty articles, his delegation hoped that the concept would be dealt with and accepted at the Conference.

27. A final major area of difficulty related to the basic zonal approach to the adoption and enforcement of measures for the prevention of marine pollution, an approach reflected in proposals such as Canada's draft treaty articles, and the working paper submitted to the sea-bed Committee in 1973 (A/AC.138/SC.III/L.56). The zonal approach appeared to be a cause for concern on the part of some States, but the concepts of the economic zone, or patrimonial sea, and of the common heritage of mankind, which had been overwhelmingly endorsed by speakers in plenary meetings, represented the best opportunity for resolving the problem of preservation of the marine environment through the zonal approach. What had to be emphasized was that the economic zone was not simply a contiguous resource zone, as appeared to be the view of some delegations, but involved the functional interrelationship between resource jurisdiction and the prevention of pollution. It applied an integrated management system to resource exploitation and environmental preservation in a broad area. Canada attached the greatest importance to meeting the concerns of some States regarding the zonal approach to the prevention of ship-generated pollution, and was gratified that a number of other delegations shared its view. That could be done by limiting jurisdiction to what was strictly necessary to meet real, concrete needs, and by striking the proper balance between the rights of flag and coastal States, between national, regional and international standards and between States' rights and obligations. Such a balance could be struck by building on the functional approach to jurisdictional questions inherent in the economic zone/patrimonial sea concept, coupling it with appropriate safeguards against unreasonable or arbitrary action by either flag or coastal States and appropriate procedures for compensation and settlement of disputes.

28. As the Canadian Prime Minister had stated, the principle of clean seas was as vital a principle for the world of today and tomorrow as the principle of free seas had been for the world of yesterday. Canada, one of the pioneers in the development of responses to environmental problems, hoped to be able to continue its contributions at the Conference.

29. Mr. MANNER (Finland) said he wished to describe in detail the 1974 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area (see A/CONF.

62/C.3/L.1) as an example of a regional agreement with a wide scope which to some extent indicated what kinds of general provisions were needed to protect the world oceans as a whole.

30. The Baltic Sea was one of the heaviest loaded sea areas of comparable size. Its ecological balance was extremely sensitive to disturbances, owing to the low salinity of its water, its shallowness and its slow and irregular exchange of water. The relatively low nutrient content of its water, its climate and topography, together with the stressed condition of its organisms, made the Baltic responsive even to small changes in its natural state. The oxygen content of Baltic deep water was decreasing, and its food chains were being threatened by chemical substances with significant toxic effects. All the States surrounding the Baltic Sea area were highly urbanized and industrialized, with intensive agriculture and forestry. The population living within the catchment area of the Baltic amounted to 150 million. The Baltic was also a sea area of heavy international navigation. Those characteristics, and the inadequacy of existing regulations aimed at protecting the Baltic Sea, called for special regional provisions for protection of the marine environment of that sea area as a whole.

31. The preparatory work for the Helsinki Convention, as well as the Diplomatic Conference which adopted it, had proceeded entirely by consensus, with no votes taken at any time. Recognition of the fact that the signatory States were confronted with problems which derived from the special characteristics of the Baltic Sea and which were too broad for national authorities to solve, led to that unanimous regional approach. So far no State had ratified the Convention, because of the new and extensive national legislation which was required in all the Baltic Sea States in order to implement its provisions.

32. The Convention covered the Baltic Sea proper, including the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic Sea. The border to the North Sea was the same as the border used in the 1973 International Convention for the Prevention of Pollution from Ships to define the Baltic Sea as a special area. The Convention did not cover internal waters of the contracting parties, but those parties had undertaken, without prejudice to their sovereign rights, to ensure that its purposes would be achieved in those waters, too. The Convention did not restrict the sovereign rights of the contracting parties to their territorial sea, but the parties had undertaken to implement the provisions of the Convention within their territorial sea through their national authorities.

33. The provisions of the Convention were without prejudice to the rights and obligations of the contracting parties under treaties concluded previously, as well as under treaties which might be concluded in the future, to further and develop the general principles of the law of the sea upon which the Convention was based. That was a direct reference to the Conference on the Law of the Sea and the conventions it might conclude.

34. The Convention contained a general obligation for the contracting parties to take all appropriate legislative, administrative or other relevant measures in order to prevent and abate pollution and to protect and enhance the marine environment of the Baltic Sea area. That basic rule was enforced by detailed provisions on different kinds and sources of pollution.

35. The provisions concerning prevention of land-based pollution divided the pollutants from those sources into hazardous and noxious substances. The parties had particularly undertaken to counteract the introduction into the Baltic Sea area—whether airborne, waterborne or otherwise—of such hazardous substances as DDT and its derivatives. They had also agreed not to introduce other noxious substances and materials, listed in annex II to the Convention, into the marine environment of the Baltic Sea area in significant quantities without a prior special permit by the appropriate national authority. The list enumerated mercury, cadmium and their

compounds for urgent consideration, as well as 15 other groups of noxious substances.

36. In annex III to the Convention, the parties also committed themselves to controlling and minimizing the detrimental effects of all kinds of harmful substances likely to cause pollution, sewage treatment, industrial wastes and discharge of cooling water from nuclear power plants. Municipal sewage was to be treated in an appropriate way so that the amount of organic matter did not cause injurious changes in the oxygen content of the Baltic Sea area, and the amount of nutrients did not cause harmful eutrophication. The hygienic quality, and in particular epidemiological and toxicological safety, of the receiving sea area was to be maintained at a level which did not cause harm to human health. The polluting load of industrial wastes and harmful effects of cooling water was to be minimized. Those provisions were of a general recommendatory nature, and it would be the task of the Baltic Marine Environment Protection Commission to give a more exact content to their application.

37. Airborne pollution was dealt with in article 6 of the Convention as a part of land-based pollution. The contracting parties agreed to endeavour to use the best practicable means to minimize airborne pollution of the Baltic Sea area caused particularly by certain enumerated noxious substances.

38. The Convention also contained provisions, in article 7, concerning the prevention of pollution from ships. In order to protect the Baltic Sea area from pollution by deliberate, negligent or accidental release of oil and other harmful substances or by the discharge of sewage and garbage from ships, the parties agreed to take measures which were set out in detail in annex IV. The annex followed almost word for word the provisions of those parts of the IMCO International Convention for the Prevention of Pollution from Ships dealing with the Baltic Sea as a special area. However, the provisions were intended to become applicable to the seven signatory States earlier than to the signatories of the IMCO Convention, and some provisions which in the IMCO Convention were optional had been made binding in the Helsinki Convention.

39. He wished to draw attention to a resolution approved by the Diplomatic Conference in Helsinki, and appearing in annex III to the Convention which requested the seven participating States to prevail upon other States and ships flying the flag of other States to act in accordance with the provisions of the Helsinki Convention. The Helsinki Conference further had invited IMCO to adopt a recommendation on the application by States other than the contracting parties of the Helsinki Convention of special rules for ships operating in the Baltic Sea area.

40. The Helsinki Convention contained a provision in article 8, which had no counterpart in other international conventions, requiring the contracting parties to take special measures, including the development of adequate reception facilities for wastes, to abate harmful effects of pleasure craft activities on the marine environment of the Baltic Sea area.

41. The Convention went further than any existing convention in prohibiting dumping in the Baltic Sea area. There were, however, two exceptions. According to article 9, dumping of dredged spoils was allowed subject to a prior special permit by the appropriate national authority, and dumping was allowed when human life, or a vessel or aircraft, was in danger sufficient to outweigh the consequent damage.

42. In article 10 of the Convention, each party agreed to take all appropriate measures to prevent pollution of the marine environment of the Baltic Sea area resulting from exploration or exploitation of its part of the sea-bed and its subsoil, and agreed to ensure the availability of adequate pollution abatement equipment.

43. The Convention contained special provisions, in article 11, concerning co-operation in combating marine pollution by

oil or other harmful substances. Those provisions dealt with co-operation between the respective authorities of the signatory States, and contained obligations for masters of ships and pilots of aircraft.

44. For the implementation of the new rules and provisions, the creation by the Convention of the Baltic Marine Environment Protection Commission was of fundamental importance. The office of the Commission, called the "Secretariat," would be in Helsinki. The Commission would promote, in close co-operation with appropriate governmental bodies, additional measures to protect the marine environment of the Baltic Sea area, and for that purpose it would receive, summarize and disseminate from available sources relevant scientific, technological and statistical information, and promote scientific and technological research. If the Convention was to be viable, the Commission would have to play an active role in finding ways to further the aims of the Convention. Thus its duties included keeping implementation of the Convention under continuous observation, and recommending amendments to the contracting parties. The Commission was a joint organ for the contracting States, and not a supranational body. It could not take decisions which would create obligations for the contracting parties against their will. Thus, its powers did not encroach upon the sovereignty of the signatory States.

45. In a very significant provision of the Convention, in article 16, the contracting parties had undertaken, directly or through competent regional or other international organizations, to co-operate in the fields of science, technology and other research, and to exchange data as well as other scientific information for the purposes of the Convention.

46. The Diplomatic Conference had not been able to agree on rules of responsibility for damage caused by pollution. The Convention therefore contained only a general undertaking by the contracting parties jointly to develop and accept rules concerning responsibility for damage resulting from acts or omissions in contravention of the Convention. Such rules should, in his delegation's view, be general in nature and should not be created separately for every region; their proper place therefore was in a new law of the sea convention.

47. The Helsinki Convention further contained provisions, in article 18, concerning the peaceful settlement of disputes. They included the possibility of using *ad hoc* arbitration tribunals, permanent arbitration tribunals or the International Court of Justice if the parties so agreed.

48. According to article 25, reservations could not be made to the Convention, in keeping with its binding nature. A contracting party could, however, suspend the application of an annex to the Convention for a period not exceeding one year.

49. As set out in article 26, the Convention was open for accession to States other than its original signatories, on condition that they were interested in fulfilling its aims and purposes and that each such State was invited by all the contracting parties.

50. To cover the period of time between the signing of the Convention and its coming into force, the Diplomatic Conference had established an Interim Commission, which would prepare the later activities of the Baltic Marine Environment Protection Commission. It would hold its first session in Helsinki in the autumn of 1974.

51. Pollution and other forms of deterioration in the Baltic Sea had been going on for a long time and could not be stopped overnight, but it was significant that all the Baltic States had joined together to effect the necessary changes. His Government was convinced that the Convention would effectively improve the abilities of all States concerned to combat marine pollution and to establish a firm foundation for the protection of the marine environment of the Baltic Sea. It was obvious that the solutions agreed upon for the Baltic could not as such be applied to other sea areas. His delegation hoped, however,

that the Convention would encourage efforts currently being undertaken to protect the environment of other sea areas, and would help the Conference on the Law of the Sea conclude a global framework for the protection of the marine environment as a whole.

52. Mr. KOVALEV (Union of Soviet Socialist Republics) said that his country attached the greatest importance to the elaboration of effective anti-pollution measures, which should and could be achieved without hampering freedom of navigation. Drawing attention to the statement by his delegation during the general debate at the 22nd plenary meeting, he considered that it should be possible, provided a mutual understanding was reached on the other complex questions on the agenda of the Third Committee, to secure for coastal States certain rights to protect the resources within a 200-mile wide economic zone from any damages arising from pollution.

53. Serious harm could be caused to both living and non-living marine resources by the dumping of wastes and other harmful materials in the sea. Coastal States should accordingly have the power to regulate dumping of wastes within a zone the width of which would be stipulated in the future convention. Dumping could be regarded as a particular kind of land-based pollution carried out to sea by ships. The issuance of licences for the dumping of wastes in coastal areas, or the refusal to grant such licences, should be the prerogative of coastal States, which should take into account international rules, particularly those laid down in the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. The coastal State should also ensure that permissible dumping did not harm shipping or neighbouring States.

54. Another source of danger to fisheries and other resources was that arising from collisions between tankers, or ships carrying other harmful substances, or from sea-bed mining operations. Coastal States should have the right beyond their own territorial waters to take protective measures against grave dangers of that kind. The measures adopted should be commensurate with the actual or potential damage.

55. The 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1973 Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil represented a balanced and correct approach to pollution hazards arising from accidents at sea. However, those instruments did not cover pollution arising from sea-bed mining operations, particularly oil drilling.

56. A future convention should therefore embrace the fundamental provisions of the 1969 Convention and the 1973 Protocol, but should be extended to cases of accidents arising from sea-bed mining operations.

57. A major problem connected with anti-pollution measures arose in connexion with the need to safeguard freedom of navigation. His delegation felt that the problem could be solved only by the adoption of international anti-pollution measures and measures to ensure their observance, particularly by flag States. The introduction of separate national measures even with regard to territorial waters would undoubtedly give rise to difficulties for navigation.

58. The problem of controlling pollution from ships could be solved on the basis of the provisions of the 1973 International Convention for the Prevention of Pollution from Ships embodying measures to prevent pollution from oil and other harmful substances transported or discharged by ships. That Convention in practice applied to all the oceans of the world. Its five technical annexes contained detailed rules and recommendations concerning the construction and special requirements of vessels with regard to pollution control.

59. The Convention also laid down, in its article 6, that a foreign cargo vessel, while in the port of a foreign State, might be subject to inspection for the purpose of ascertaining whether

it had discharged any substances in contravention of the relevant rules.

60. His delegation took the view that the 1973 Convention contained adequate provisions for the prevention of pollution from ships. If they were strictly observed, there would be no need for additional measures to be adopted on a national basis; moreover, they should be incorporated in a future convention in such a way as to form the basis for future work by IMCO and by specialized conferences for the formulation of specific technical rules and recommendations for the prevention of pollution from ships. In particular, it was essential to stipulate in a future convention that a coastal State had the right to take, within the limits of its internal and its territorial waters—of 12 miles in width—the necessary measures to ensure that ships observed the internationally agreed rules prohibiting or restricting the discharge of harmful substances. In the case of infringement of those rules by foreign vessels, the coastal State should have the right to inform the flag State, or to take appropriate legal or administrative action in accordance with its own legislation. The captain or other officers of the ship should be liable to fines on a non-discriminatory basis. Punishment in the form of deprivation of liberty should be imposed only by the flag State, which would be responsible for informing the coastal State of the measures taken.

61. A future convention should, of course, also lay down more general obligations for all States to ensure the cleanliness of the seas and oceans of the world. In particular, States should have the obligation to ensure that ships flying their flags refrained from causing marine pollution, and to co-operate with other States and competent international organizations in elaborating and applying more progressive standards.

62. His delegation, together with that of the German Democratic Republic, was currently seeking to formulate some of the provisions to which he had already referred and which would constitute additional draft articles for combating marine pollution.

63. Mr. WARIOBA (United Republic of Tanzania) said that every State had the obligation to take marine pollution control measures and to co-operate to that end both at the national and at the international level. Two issues arose in that connexion.

64. The first issue concerned the adoption of regulations. It was necessary to harmonize both national and international regulations in order to deal with pollution effectively. While international regulations were necessary their adoption was a slow process, and they represented only a basic minimum. They must therefore be supplemented by national regulations, especially in areas adjacent to the coast. In the case of the territorial sea, regulations against vessel-source pollution must be related to land-based sources. In the economic zone, they must be related to pollution sources arising from resource exploitation; while both coastal States and flag States had a responsibility in that field, their respective jurisdictions must be harmonized. As to freedom of navigation, he said that it was not the intention of coastal States to impede navigation. Many of them were dependent upon shipping for their international trade. The elaboration of international regulations must not be a monopoly of one forum: special cases, which might be of a subregional or regional nature, should be dealt with in special international forums, whether already in existence or still to be established.

65. Turning to the second issue, that of enforcement, he said it must be acknowledged that the current methods of enforcement had serious shortcomings. Despite a multiplicity of regulations, the oceans continued to be polluted. For the purposes of enforcement, there must be a division of competence between the flag States and the coastal States. Coastal States must be empowered to take enforcement measures in areas within their national jurisdiction, since many flag States lacked sufficient concern to ensure that anti-pollution measures were

implemented. The provision of compensation in respect of liability for damage was no consolation; in fact, it was detrimental: in view of the difficulty and frequent delay in attributing liability, action for compensation was in most cases never initiated. Hence, preventive measures were better than compensation. In areas under national jurisdiction, the coastal State should have enforcement powers in respect of both international and national regulations. In the case of the high seas, enforcement must also be tightened. The International Sea-Bed Authority, if and when established, should be given enforcement powers and, in the absence of international machinery, the powers must be effectively shared among all States.

66. In conclusion, he emphasized the need to limit freedom of navigation to the extent required in order to combat pollution.

67. Miss AGUTA (Nigeria) said that her delegation attached great importance to the need for adequate provisions for pollution control, which must be a joint product of action by coastal States and by international machinery. Any future convention on the law of the sea should embody provisions on pollution control and on compensation for damage caused by pollution.

68. Over the past few years, considerable strides had been made at the intergovernmental level, particularly by IMCO, and a number of anti-pollution conventions had already been concluded. She also wished to commend to the Committee the outcome of the United Nations Conference on the Human Environment held at Stockholm in 1972. Such developments could furnish guidelines for the elaboration of a future convention. Concise legal principles on the rights and responsibilities of States, including coastal, flag and port States, should be evolved in such a way that the autonomy of the IMCO Conventions was not prejudiced. Her delegation pledged its co-operation in the elaboration of the appropriate legal principles.

69. Mr. APPLETON (Trinidad and Tobago) said that the comprehensive statement by the Executive Director of the United Nations Environment Programme at the 31st plenary meeting provided a good basis for the Committee's discussions.

70. Trinidad and Tobago was a very small oil-producing island State with a tremendous amount of oil tanker activity in and around its coastal waters, involving importation and exportation of crude oil entirely by non-nationals and foreign flag vessels.

71. Extensive offshore exploration and exploitation activity was taking place on the continental shelf of Trinidad and Tobago, whose coastal waters were therefore extremely sensitive to the risk of oil pollution through deliberate dumping by ships, and possible tanker accidents and offshore oil-well explosions. Its land/marine pollution ratio was therefore probably just the opposite to that of many developed countries, which had reported in 1973 the incidence of 80 per cent land-based and 20 per cent marine-based pollution in those countries. Moreover, despoliation of beaches was a constant threat to the tourist industry of Trinidad and Tobago, which was thus both a potential polluter of the marine environment and a victim of its consequences.

72. The Government of Trinidad and Tobago was therefore seriously concerned with the problems of its marine environment and above all with the question of liability and responsibility for pollution damage, most of which was caused by non-nationals.

73. Motivated by that concern, his delegation had submitted to the 1973 Geneva session of the sea-bed Committee two draft treaty articles (A/AC.138/SC.III/L.54) which sought to insure against marine pollution damage and to place liability for pollution damage on the entity or agent responsible for such damage, as opposed to placing it on the coastal State concerned. Those articles read as follows:

Article I:

"Coastal States shall reserve the right to require minimal levels of insurance against pollution damage for all commer-

cial vessels operating within their territorial waters and within a broad area adjacent to their coastline."

Article II:

"Liability for any pollution damage within or beyond national jurisdiction arising from activities within the national jurisdiction of coastal States shall be borne by the entity responsible for such damage. In the case of vessel-source pollution, liability shall rest directly with the polluting agent or entity. With respect to damage arising from exploration and exploitation activities from the sea-bed, liability shall rest with the offshore operator concerned."

74. His delegation's draft article II was in contra-distinction to principle (e) (i) and (ii) of the working paper submitted by Australia (A/AC.138/SC.III/L.27). It was also contrary to article VII, paragraphs 1 and 2 of the draft articles submitted by Canada (A/AC.138/SC.III/L.28) and to the statement made by the Executive Director of UNEP at a plenary meeting the previous week. Those draft articles and the statement sought to make the coastal State liable for pollution damage caused by parties operating within the jurisdiction of the coastal State. His delegation felt that the principle of liability should be objectively stated, with primary responsibility for damage to the environment resting on the party responsible, whether it was a State or a public or private entity. The State would in any case have a residual responsibility to ensure that adequate reparation was made for any damage caused.

75. With respect to the question of regional vis-à-vis international standards for pollution prevention and control, his delegation supported the views of many developing countries that too high regional standards would increase the already high cost of their industrial development. It wished, however, to make a clear distinction between land-based and marine-based sources of pollution in relation to standards.

76. His delegation agreed that the highest international standards should be maintained for oil tankers, ships and offshore oil operators, and major sources of marine-based pollution, whether they operated in a developing country or not. Affluent multinational corporations were mainly involved, and they could well afford the highest international standards for marine pollution prevention and control. On the other hand, smaller land-based industries in developing countries were usually less of a threat to the marine environment and could, moreover, less afford the extra cost of too high international standards of pollution prevention and control. However, even in that category there was the possibility of extremely sophisticated and indeed extremely noxious industries being established. Such industries in developing countries ought to be subject to the highest international standards for pollution prevention and control.

77. The peculiarities of the industry concerned must also be taken into account. Naturally the oil industry and industries producing noxious chemical substances were to be subject to the highest international standards for pollution and prevention, whether they were established in a developing country or not. The fact that such industries might happen to be in a developing country was irrelevant. His delegation therefore wished to suggest the following draft articles III and IV:

"Article III

States shall establish individually, or through the appropriate regional and international organizations, minimum international standards for the prevention and control of marine pollution arising from the exploration and exploitation of the continental shelf and from vessels operating within national jurisdiction."

"Article IV

States shall individually establish national standards for the prevention and control of land-based sources of pollution, but they shall take all necessary action to ensure that those industries which by reason of their very nature pose

potential threats to the environment shall always conform to the highest international standards.”

78. His delegation hoped to submit formal proposals along the lines suggested for the Committee's consideration, and reserved the right to intervene again on that issue.

79. Mr. SIMMS (United Kingdom) thanked the Finnish representative for his clear and comprehensive explanation of the Helsinki Convention, the signatories to which had demonstrated that a comprehensive approach to marine pollution could be based on existing international law.

80. He had been slightly puzzled by the Canadian representative's reference to the draft articles on the territorial sea and straits tabled by the United Kingdom delegation in the Second Committee, since those draft articles had no bearing on the question whether a State might impose, as a condition of entry to its internal waters, requirements going beyond those internationally agreed. His delegation proposed to deal with that matter in the Second Committee.

81. The consensus of both the New York and Geneva sessions of the sea-bed Committee had favoured the idea of an “umbrella” approach to marine pollution, and his delegation hoped that that consensus would be maintained. His delegation anticipated that the articles on marine pollution laying down general principles for its prevention and control would eventually form one chapter of the comprehensive convention on the law of the sea. The Committee must therefore resolve the rights, obligations and competences of flag and coastal States to make regulations, the areas in which they might exercise their jurisdiction, and what powers of enforcement they might use in those areas. Detailed technical regulations would not, however, come within the “umbrella” convention, but would be left to conventions on special subjects, examples of which were the 1973 International Convention for the Prevention of Pollution from Ships, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, signed in London in 1972, the Convention for the Prevention of Marine Pollution from Land-based Sources, signed in Paris in 1974, the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, signed at Oslo in 1972, and the comprehensive Convention on the Protection of the Marine Environment of the Baltic Sea Area, signed at Helsinki in 1974.

82. The United Kingdom had a very extensive coastline and was much exposed to pollution from what was probably the world's busiest shipping lane, the English Channel and the Dover Straits. It therefore needed to be able to protect its shores and waters against marine pollution, like any other coastal State. Indeed, it had been one of the victims of the largest ship-pollution incident ever known. However, preservation of the right of innocent passage was vital to the United Kingdom, with its dependence on long-distance trade. It was essential and quite possible for the new convention to balance the need to prevent and control pollution with the need to preserve freedom of navigation. The Committee must ensure that the steps it took or the measures it invited States to take should be clearly designed to that effect.

83. As far as the convention and the draft articles were concerned, the United Kingdom welcomed the general and particular obligations in existing drafts to preserve the marine environment from the principle sources of pollution (land-based, dumping, vessel-source pollution and exploitation of the sea-bed), to avoid damage to the interests of other States and interference with the legitimate uses of the marine environ-

ment. Other articles contained important commitments on abatement and elimination of pollution, the promotion of scientific research into marine pollution and its dissemination, and monitoring of the marine environment. The United Kingdom also supported the comprehensive article on the provision of technical assistance with its valuable section on contingency planning for major incidents, and welcomed the proposals for the establishment of regional conventions.

84. His delegation would like to have a very firm compulsory dispute settlement procedure, for new laws would require careful interpretation. It thought that the discussion on the article on competences to make regulations should deal separately with the four principal sources of pollution of the marine environment, and that each should be considered in terms of international and national competence. The same was true of the discussion of areas, since different areas might be defined by the convention where States' powers differed, the obvious ones being the territorial sea and the sea-bed beyond national jurisdiction.

85. Moreover, his delegation would like the Committee to examine the enforcement question for each source of pollution separately, since the enforcement powers of the flag State over vessel-source pollution and the desirable balance between the flag, coastal and port States was clearly different from the normally absolute enforcement powers of a coastal State over its own land-based sources of pollution. Three of those sources (sea-bed exploration and exploitation, land-based sources and dumping) should present no difficulties for the Committee. Moreover, if coastal States exercised their duties and obligations over those three sources, through national, regional or international regulations or conventions, they would affect few interests other than their own. That would be the most effective method of preserving the marine environment.

86. The reverse, however, was true of vessel pollution, where the interests of all nations were involved and an international approach was best because consistency was needed. As the potential danger of vessel-source pollution had been recognized, the willingness of the flag States to make stricter regulations to control such pollution had increased, culminating in the 1973 International Convention, which went a long way towards eliminating deliberate vessel-source pollution. The combination of firm flag State obligation allied with the arrangements in the 1973 Convention for inspection in port should enable violations to be discovered and punished without creating additional hazards by interventions outside the territorial sea that could not be justified under the International Convention or an extension of it.

87. The United Kingdom was pleased that the 1973 Convention embodied the idea of especially vulnerable areas and measures, to be decided internationally. Any further special areas and measures should also be decided internationally. National discharge regulations more stringent than those currently required under the 1973 Convention would in practice have much the same effect as special construction requirements, since a ship had to be built and equipped to meet such requirements.

88. He hoped that the Committee would deal with the less controversial items on its agenda upon which he believed good progress could be made, and thus have time to deal with those matters now before considering those questions in the First and Second Committees which related to its own work.

The meeting rose at 6 p.m.

5th meeting

Wednesday, 17 July 1974, at 10.40 a.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Preservation of the marine environment (*continued*)

[Agenda item 12]

1. Mr. HARRISON (United Nations Educational, Scientific and Cultural Organization) said that the law of the sea must be formulated in the context of human culture, human aspirations and, in particular, the natural environment, and that UNESCO was in a unique position to provide assistance, advice or information about the marine environment, either at the request of interested Member States or through co-operative programmes and to help Member States in the training and education of their own specialists.

2. The environment, including the marine environment, was an extremely complex and dynamic system that responded to physical, chemical, biological and geological processes. In the past 30 years intensive scientific research had been carried out on the basic framework of those processes and UNESCO had played a significant part in that research. The environment was the result of the sum total of basic processes and their interactions, whose intensity varied with time and place. Hence detailed local studies were often needed to provide an understanding of specific environmental problems. In addition, the effect of any human activity on the environment was to change it, sometimes drastically and suddenly, but more often gradually, though in ways that could have equally severe cumulative effects. Thus the use of the sea must be carefully planned, controlled and monitored.

3. The biological and mineral resources of the sea and the structure of the sea-bed were the result of long-term natural processes. If that circumstance was ignored, the law of the sea would be weaker and more difficult to implement.

4. In the formulation of the law of the sea cultural considerations had to be taken into account, and they in turn were influenced by the nature of the environment. The law of the sea must serve the ethical goals of human survival, enhancement of the quality of life for the individual and the evolution of culture. At the same time, it must be sufficiently flexible to recognize the inevitable changes in the environment that were brought about by natural causes.

5. UNESCO performed an essential function in disseminating information and in arranging international co-operation with respect to marine sciences, and could provide expertise in scientific questions concerning the marine environment. In its capacity as an educational, scientific and cultural organization, UNESCO could also provide assistance with respect to the social and cultural consequences of legal proposals.

6. In summary, UNESCO's programmes on the marine environment were related to its other scientific co-operation programmes. It helped countries develop their over-all science policies and plans, in which marine sciences played an important part. It also had programmes in education and training and a major programme dealing with the impact on society of scientific and technological progress and, conversely, the effects of society on science and technology. Finally, it was concerned with the quality of life, cultural and social development and human rights, all of which must be taken into account by the law of the sea if it was to be effective.

7. Mr. DELIN (Sweden) said that his delegation considered it extremely important that the Conference should adopt positive decisions regarding the protection of the marine environment. In that respect, it fully shared the opinion expressed by Mr. Strong, Executive Director of the United Nations Environment

Programme (UNEP), in his statement at the 31st plenary meeting.

8. In its view, the best way for the Conference to fulfil its task would be to agree on a convention containing basic principles and rules on the obligations of States to preserve the marine environment. It would thus be left to competent international organizations such as UNEP and the Inter-Governmental Maritime Consultative Organization (IMCO) to elaborate detailed provisions.

9. With respect to the texts submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, his delegation accepted the draft article on basic obligations and also supported, in principle, the article on particular obligations, with some reservations on certain details.

10. In connexion with the particular obligations he noted that the draft articles submitted to the sea-bed Committee frequently used the word "standards". His delegation would be reluctant to use that term if it meant, for instance, maximum allowed levels of pollution, for it was impossible to establish such maximum levels for large areas, owing to the varying capacity of the sea water to break down different materials. If, on the other hand, it was agreed that the term "standards" had the meaning of "regulations" or "rules and acting norms", he would consider it acceptable.

11. He could also accept the draft article concerning the transfer of damage or hazard from one area to another and the article on global and regional co-operation.

12. The draft article on monitoring should be supplemented by a provision to the effect that a coastal State must not normally refuse permission to carry out within its territorial sea observations and measurements provided for in the article.

13. With regard to land-based sources of marine pollution, he supported alternative A appearing in volume I, page 93 of document A/9021 and Corr.1 and 3. On the question of standards for sea-bed sources of pollution, he favoured provisions essentially in conformity with alternative B, appearing on page 94. Finally, as far as standards for vessel-source pollution were concerned, he would support a text stipulating that States should, through the appropriate international organization, establish international standards for preventing vessel-source pollution, including special standards for areas the ecological character of which required stricter regulations.

14. With regard to the competence of States to establish standards for the protection of the marine environment in their coastal waters, his delegation understood the desire of coastal States to protect the marine environment by unilateral standards. On the other hand, it could also well understand the desire of nations which had large merchant fleets that the regulations affecting shipping should be internationally agreed upon in the same way as safety regulations and rules for navigation. A reasonable compromise might be the inclusion in the convention of a provision to the effect that "special areas" might be established if certain oceanographic and ecological conditions existed in certain parts of the sea, a concept which had already been accepted in the International Convention for the Prevention of Pollution from Ships of 1973. In that case, the coastal State which considered that its situation justified the establishment of a special area could notify a competent international organization thereof and submit draft special rules to be applied in that area. That international organization

could then consider whether a special area could be established in accordance with the convention, and in that case, examine proposed rules and approve them before their entry into force. However, proposed regulations regarding dumping, navigation, dangerous cargoes and so forth which were connected with the operation of ships could enter into force as soon as the competent organization had approved the establishment of the special area.

15. As to enforcement measures, his delegation considered that in addition to the flag State, both the coastal State and the port State should be entitled to take action against ships which had violated internationally approved environmental regulations.

16. With regard to liability and compensation, it was essential to emphasize the special character of the damage in question. Damage to the marine environment in many cases did not affect any specific person. Thus it could be said that pollution of the high seas was damaging to mankind as a whole. It was often very difficult to prove a causal relationship between a certain activity and the resulting damage and to estimate the damage in terms of money. For those reasons it was obvious that the traditional doctrine of compensation for damages could not be applied in solving satisfactorily questions concerning compensation for damages to the marine environment, a matter which should be studied in more detail than was possible in the Committee.

17. The convention could stipulate that States should adopt national legislation which would be in consonance with the convention's basic principles. If a State did not observe that or ensure that the regulations were complied with, it would be liable for damage from pollution caused to areas under the jurisdiction of another State. Furthermore, it should be provided that a foreign citizen in a contracting State would have the same legal remedies and the same right to compensation as a citizen of that State, even if the damage had occurred outside its territory. Finally, the convention should specify that States had an obligation to develop international law regarding liability and compensation for marine pollution within and beyond the limits of national jurisdiction. A possible future solution might be the establishment of an international fund for compensation for damage.

18. As his delegation considered it of fundamental importance that the Conference should reach an agreement on the rules concerning the protection of the marine environment, it would be ready to show flexibility in order to contribute to a common solution.

19. Mr. KHARAS (Pakistan), noting that the sea constituted an important part of the human environment, observed that environmental problems on land had their origin in the poor economic and social conditions from which developing countries suffered and that those countries, with their limited resources, were looking to the immense resources of the ocean to overcome those difficulties. Modern technological advances had made it possible to take advantage of those resources but the selfish desire to exploit them quickly had given rise to pollution of the sea and irreversible damage to its living resources.

20. The merchant fleets of the world had increased considerably in number and size of ships, and the risk of accidents and pollution had dramatically increased. That, along with land-based sources of marine pollution, which were the major sources, opened up alarming prospects. The protection of the marine environment had become a matter of great urgency and required solutions at both the national and the international levels.

21. His delegation fully supported the Declaration of Santo Domingo of 1972,¹ which recognized the duty of every State to

refrain from performing acts which might pollute the sea and the sea-bed, either inside or outside its respective jurisdiction. It also fully agreed with the Declaration of the Organization of African Unity (A/CONF.62/33) which gave every State the right to manage its resources and imposed the obligation to prevent and control pollution of the marine environment. It also agreed with the principles concerning the rights and duties of States in respect of the environment, including the marine environment contained in the Declaration adopted at Stockholm in 1972.²

22. It was recognized that all States had the sovereign right to explore and exploit the living and non-living resources in their territorial waters and it was expected that under the new convention that right would be extended to the so-called economic zone, which would entail the jurisdiction of the coastal State with respect to the preservation of the marine environment in that zone. For that purpose, his delegation felt that although international standards should be drawn up, their adoption and enforcement should be the responsibility of coastal States in the areas under their national jurisdiction, having regard to such factors as the technological capability and economic resources of the States concerned, as well as ecological and geographical conditions.

23. The International Sea-Bed Authority to be established under the future convention should be responsible for the prevention of pollution and the preservation of the marine environment in the international area and should also provide the necessary technical assistance to coastal States for the adaptation and enforcement of international standards in areas within their jurisdiction.

24. His delegation fully subscribed to the view that there were a number of gaps in the existing conventions for the prevention of marine pollution and that those gaps must be filled. He commended IMCO for its role in supervising and regulating the application of measures for the avoidance of accidents to ships and the prevention of pollution and said he was confident that by the end of the current decade IMCO, with the active co-operation of Governments and other international bodies, would be able to eliminate pollution caused by intentional oil discharges in the seas.

25. Pakistan, whose only major port was Karachi, did not know the exact magnitude of its pollution problem. However, studies and research carried out during the previous 10 years near its coasts had revealed a rapid decline in the shrimp population, which was an important source of Pakistan's foreign exchange. His Government was conscious of that problem and was taking appropriate measures, but lacked adequate information about the state of its coastal waters; it needed to improve its existing fragmentary knowledge of the sources of pollution, the nature of pollutants entering the sea, and so forth. Since other developing countries were perhaps in the same situation, there was need for a system to monitor such information on a regional and global basis, and he was happy to learn that the United Nations Environment Programme had already initiated activities in that area. He hoped that under the new convention the developing countries would be provided with all the necessary data and technology to enable them to combat marine pollution in an effective manner. In that regard, appropriate training of the personnel of the developing countries was equally important.

26. Mr. HASSAN (Sudan) said that his delegation had from the beginning taken an active part in the work of the sea-bed Committee and of the United Nations Conference on the Human Environment, and that the Committee's task now was to make effective the principles and recommendations relating to the marine environment which had been formulated at that Conference, as part of the process of the progressive development of the law of the sea.

¹ *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 and corrigendum, annex I, sect. 2.*

² *Report of the United Nations Conference on the Human Environment* (United Nations publication, Sales No. E.73.II.A.14), chap. I.

27. The effective contribution of the developing countries to the Stockholm Conference had shattered the myth, prevalent prior to the Conference, that the developing countries would take a lukewarm attitude towards environment issues and regard them as the exclusive concern of the rich countries which monopolized the sea and the oceans. The developing countries, while accepting their share of responsibilities for preserving and enhancing the marine environment, were committed to development and to improvement of the welfare of their peoples. Those two objectives were not necessarily opposed to one another, but were in fact perfectly compatible. The sovereignty of a State over its natural resources in the sea or land area within its jurisdiction was one of the rights solemnly declared in the Charter. The prevention of marine pollution and the preservation of the equilibrium of the marine environment were entirely compatible with the goals of development.

28. His country intended to assume the responsibilities and the duties necessary to prevent destruction of its biological resources, and was devoting considerable resources to that end, since the Red Sea, which was a closed sea, was one of the most important waterways for tanker and container traffic and its coasts were thus exposed more than any other marine area to oil spillage, intentional or unintentional. Using the most modern achievements of science and technology, his country intended to exploit the mineral resources in the sea-bed of its jurisdictional waters, exercising its sovereignty over its natural resources in conformity with its declared objectives of development and welfare. In so doing, it would fulfil its obligation not to pollute the waters, and would observe pertinent national or international regulations.

29. Ecological concerns had prompted his country, at the twenty-seventh session of the General Assembly, to submit resolution 3000 (XXVII) concerning measures for enhancing the human environment, a resolution which had been accepted without a dissenting vote and which was one of the most quoted General Assembly resolutions in its field. In essence, it called for ensuring a compatible relationship between environmental programmes and the application of modern science and technology.

30. His delegation was optimistic, and believed that, with the co-operation of all, an agreement could be reached.

31. Mr. NITTI (Italy) said that pollution problems affected all countries equally, and that a solution should be sought which met the interests and concerns of all States. He wished to set forth briefly the principles and elements on which his delegation's position was based. First, regulations and standards concerning the prevention of pollution from ships should be internationally agreed upon within the framework of appropriate international organizations, particularly IMCO. Secondly, enforcement of such regulations should continue to be within the competence of the flag State, in particular with regard to vessel design, construction and equipment. In that connexion, it had been argued that a void was created when the flag State could not or would not enforce its own rules. However, that concern was not necessarily connected with the question of the source of the regulations, since violations or lack of enforcement of legal rules were perfectly possible whatever the source. Thirdly, his delegation supported international recognition of the notion of "special areas" which, because of their particular characteristics, needed special protection against the danger of pollution. The Mediterranean had been recognized as a special area in the 1973 International Convention for the Prevention of Pollution from Ships. The international approach to that question was a valid one, since States in special areas could, for their part, conclude regional and subregional agreements consistent with the guiding principles and rules adopted at the international level. However, such an approach was not always wholly satisfactory since, for example, the 1973 Convention did not extend to the Mediterranean the prohibition against discharges of certain harmful substances which it

provided for in relation to other areas. Nevertheless, his delegation expressed confidence that such prohibition would ultimately be extended to the Mediterranean; that would justify its conviction as to the opportunity for an approach of an international character which Italy had always supported. Fourthly, measures carried out by States with regard to land-based pollution should take into account standards which were elaborated at the international level, and possibly also at the regional level.

32. Mr. ODA (Japan) said that the international community, having realized that it was necessary to preserve the marine environment from further deterioration, had now also become aware of the necessity for a world-wide agreement on the control of marine pollution. The major type of marine pollution was land-based, and that type included the discharge into the sea of industrial and agricultural wastes and of domestic sewage. Although such pollution should be controlled through laws and administrative action applied by each nation, international law could not be indifferent to its adverse effects. Every nation was bound to prevent pollution which could affect the marine areas beyond its jurisdiction and prejudice the legitimate interests of other nations. That principle had been reflected in the Declaration of the United Nations Conference on the Human Environment, which had also provided that States, through competent international organizations, should establish environmental requirements to serve as a basis for the measures which they elaborated.

33. Exploration and exploitation of the sea-bed did not cause significant pollution problems when properly conducted and controlled. However, because of the ever-increasing number of oil and gas drillings, it was inevitable that risks of pollution would increase. The legal implications of such pollution were similar to those of land-based pollution. In that regard, his delegation believed that appropriate international organizations such as IMCO or the proposed Sea-Bed Authority should establish minimum standards for the prevention of that type of pollution within coastal sea-bed areas. Such standards should include, *inter alia*, design strength, seaworthiness and stability of offshore installations. In addition, it fell within the competence of coastal States to require stricter standards for the exploitation of marine resources in their coastal areas.

34. It also had to be recognized that land-based dumping into the ocean of wastes, including radioactive materials and highly toxic chemical materials, would continue to increase. His delegation therefore hoped that, as soon as possible, a large number of countries would become parties to the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, which prohibited entirely the dumping of the most dangerous wastes and made the dumping of other wastes subject to a regulatory system. The possibility also had to be taken into account that natural conditions in certain areas required stricter rules to control dumping, which, if approved by any competent international organization such as IMCO, would be applicable to the vessels of any nation.

35. The most significant source of ship-borne pollution was the discharge of oil or oil mixtures into the sea. The International Convention for the Prevention of Pollution of the Sea by Oil, concluded in London in 1954, had not resulted in the complete elimination of intentional discharges of those substances. In 1969, therefore, IMCO had approved extensive amendments which, once they entered into force, should lead to the attainment of that goal. Moreover, in 1973 IMCO had adopted the International Convention for the Prevention of Pollution from Ships which took into account practically all pollutants. However, his delegation believed that other regional arrangements, setting much stricter standards for the discharge or dumping of harmful pollutants in certain ecologically or biologically vulnerable areas, would be required.

36. The adoption of standards posed the problem of ensuring their enforcement. The question had often been raised whether

the flag-State approach constituted a feasible and proper solution to that problem. His delegation believed that in resolving the conflict between the traditional freedom of navigation, on the one hand, and the exercise of enforcement control by coastal States, on the other, the traditional flag-State principle should serve as a basis for enforcing pollution control standards. However, in order to maintain that principle, the flag State should, first, be responsible for compliance by its vessels with international standards for ship design, equipment, construction and manning, as well as those relating to the dumping and discharge of pollutants. Secondly, inspection by competent authorities when ships entered port would be an effective measure to prevent any violation of those international standards. The flag State would use the report prepared by such authorities in taking any necessary administrative or judicial measures against vessels which had violated the standards. Thirdly, in view of the fact that in many cases it was not the flag State which suffered most, it would be appropriate to give certain enforcement powers to the coastal State in cases where a ship had discharged or dumped pollutants in areas close to its coast. In that regard, two overriding interests had to be borne in mind. On the one hand, the marine environment had to be effectively and adequately protected against pollution, and for that purpose the coastal State was perhaps in the best position to enforce the relevant regulations; on the other hand, intervention by the coastal State must not damage the very broad interest of the international community in the freedom of maritime traffic.

37. Mr. MINTZ (Israel) said his country had a twofold interest as a coastal State to protect its shores and seas from pollution and as a shipping State interested in shipborne trade. His delegation therefore considered that the distinction between a coastal State and a maritime nation was a somewhat artificial one, especially when account was taken of the tendency of States to develop their own shipping industry. To reconcile those two interests, practical questions were to be posed: how to induce the shipping industry to prevent pollution and what Governments could do to that end.

38. The first matter to consider was appropriate legislation. He reported that Israel had enacted new anti-pollution legislation which substantially increased penalties for discharge of oil into the sea and considered that the Conference would be taking a constructive step by adopting a resolution calling upon all States to review and if necessary to improve their legislation on the subject.

39. A second practical matter was that of ensuring quick prosecution of those responsible. The Israeli Ministry of Transport, which was vested with the task, had recently filed numerous prosecutions against owners and masters of vessels accused of causing pollution, and had applied for early hearings.

40. A third matter was that of production of evidence of witnesses who were not in the country, as to offences committed abroad. Israel was considering the possibility of introducing in Parliament a bill which would allow the courts to accept documentary evidence submitted by proper foreign authorities as to pollution offences committed by Israeli ships in the vicinity of their coasts. Israel would expect other Governments, on a reciprocal basis, to prosecute their ships upon receipt of similar evidence in writing from Israeli authorities as to pollution violations committed by their ships in the vicinity of Israeli coasts. That would facilitate efficient prosecution by the flag State, as suggested by the previous speaker, the representative of Japan.

41. Those matters could also be the subject of resolutions by the Conference, which might entrust an international organization such as IMCO, which had considerable experience in the subject, with the task of elaborating rules to facilitate prosecution of offenders. Furthermore, IMCO could be entrusted with considering the proposal made by the Norwegian delegation at

the 25th plenary meeting whereby States would set up a mandatory insurance fund to cover pollution damage caused by ships passing through the waters of a foreign State, thus relieving the latter and its nationals of the need to prove fault, negligence and liability by the polluting vessel and also of the cumbersome need to sue in foreign courts. To that end it might be possible to enlarge the scope of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, signed at Brussels in 1971, or to prepare an additional convention modelled upon it.

42. The 1973 International Convention for the Prevention of Pollution from Ships would probably enter into force in 1977 and until that date States bordering upon seas defined as special areas were to provide reception facilities for ships in their ports. Governments represented at the Conference could not raise claims against shipowners unless they carried out obligations devolving upon themselves. Israel was making arrangements to prepare such facilities within the time-limit set by the Convention. It hoped the same attitude would be taken by all States concerned. A Conference resolution in the matter would also be constructive.

43. He referred to the statement of the Finnish delegation at the preceding meeting as to the provisions of the 1974 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area (see A/CONF.62/C.3/L.1) and considered the Helsinki arrangements could serve as guidance in other special areas such as the Mediterranean, to be worked out by experts. A first step in that direction had been the FAO meeting at Rome in February 1974 of Mediterranean States on the Protection of Living Resources and Fisheries from Pollution in the Mediterranean and the Inter-Parliamentary Conference of Coastal States on the Control of Pollution in the Mediterranean, the latter held in April 1974. Just as Israel had co-operated with other Mediterranean States in those two meetings, in order to preserve the Mediterranean marine environment, so it was willing to co-operate on all matters arising out of the 1973 Convention.

44. Mr. MANSFIELD (New Zealand) said that his country's isolation from the rest of the world protected it against certain forms of marine pollution. It was also true that the volume of shipping, which might give rise to pollution of its coasts, was relatively small. However, New Zealand had a very long coastline, a large continental margin, frequently adverse weather conditions and dangerous straits—factors which made the country particularly vulnerable to pollution, especially by oil from shipping. For that reason, it would seek recognition of the right of a coastal State to apply anti-pollution laws to all shipping in a broad zone of its adjacent sea. That position in no way implied that the establishment of internationally agreed standards for the control of vessel-source pollution was not important. On the contrary, such standards were essential for the development of an integrated approach to the preservation of the marine environment. At the same time, it was essential that, within the area under their jurisdiction—he had in mind the economic zone—coastal States should retain the right to enforce international standards in respect of pollution from shipping and, where necessary, to apply reasonable additional or supplementary rules.

45. New Zealand's economy was heavily dependent on maritime trade and hence on international navigation. It would therefore resist any proposal which, in its view, might interrupt or hinder the flow of shipping. The power of the coastal State should be of a residual character only. His delegation was ready to discuss the manner and circumstances in which that power might reasonably be exercised, with a view to striking a satisfactory balance between the interest of the coastal State in protecting its marine environment and the interest of both the coastal and the flag State in ensuring the continued flow of international shipping.

46. The same balance must be struck with regard to enforcing the standards for vessel-source pollution. Clearly, it was for the flag State to ensure that the applicable regulations were enforced. From the coastal State's point of view, however, flag-State jurisdiction alone could not be a sufficient guarantee of compliance with standards.

47. In order to avoid difficulties in obtaining prompt enforcement action by States which in many cases might be situated a great distance from the place where the infringement had occurred, many countries had recognized the suitability of a sharing of enforcement action between the flag State and the coastal State.

48. The area in which the coastal State should have the right to establish its own supplementary standards and to take enforcement action against infringements was the so-called economic zone or patrimonial sea. Within its zone of jurisdiction, the coastal State should have both rights and obligations. It would, in fact, have a responsibility for the rational exploitation of the zonal resources and, for that reason, recognition must also be given to jurisdiction in respect of the preservation of the environment which supported those resources. He therefore urged the Committee to bear in mind the essential relationship between the exploitation of the resources of the economic zone and the prevention of pollution.

49. Mr. PAPAGEORGIOU (Greece) said that the Committee should bear in mind the conclusions reached by Sub-Committee III of the sea-bed Committee with regard to basic obligations to preserve the marine environment, particular obligations to prevent pollution of the marine environment, global and regional co-operation, technical assistance, monitoring and standards, all of which should serve as a basis for future negotiations, together with all the other relevant proposals submitted to the Sub-Committee and any new proposals that might be submitted in the Conference.

50. Turning to the organization of work, he submitted that the Committee should proceed immediately to those issues on which Sub-Committee III had not been able to prepare draft articles, namely, those relating to a definition of marine pollution, responsibility and liability, enforcement measures, immunities, freedom of the high seas, settlement of disputes, relationship to other treaties or conventions and international institutions.

51. On the issue of standards, he reiterated his delegation's view that they must be international, because only in that way would it be possible to attain the goals of the convention. If, at a later stage, a coastal State considered that those international standards were inadequate to cope with a specific situation, it could propose the adoption of additional standards through amendment of the convention. As to the question of enforcement measures, his delegation took the view that responsibility should rest with the flag State. In any case, the port State and the coastal State could be given the power to enforce the international standards in special cases of emergency or in cases where the flag State could not and would not enforce the internationally agreed standards within a specific time. Furthermore, the Conference should take steps to include in the convention special provisions on the enforcement of international standards in the Mediterranean, the Baltic Sea, the Black Sea, the Red Sea and the Gulfs area, which the 1973 IMCO Convention had designated as special areas.

52. His delegation was of the opinion that, instead of giving enforcement powers to coastal States, it would be more appropriate to define exactly the obligations of the flag State. Given the importance of the item, stemming from its complexity and its implications, his delegation intended to submit specific proposals during the Committee's unofficial meetings.

53. Mr. FARINHA DA CONCEIÇÃO (Portugal) stressed the important role which the sea played in his country's economic life. His delegation believed that international standards

with respect to the preservation of the marine environment should be established, on the basis of which every coastal State would have the right to lay down regulations guaranteeing its effective control over operations of any kind carried out in the maritime zone under its sovereignty and jurisdiction. His country was in favour of full international co-operation to that end, including concerted action by neighbouring coastal States with respect to specific problems of a regional nature.

54. Because of its geographical situation, Portugal was more likely to suffer from than to cause pollution. Nevertheless, it accepted coastal State responsibility for damage to the marine environment and to third States, while still claiming coastal State rights when pollution was caused by another State, whether coastal or land-locked.

55. International co-operation and technical assistance to prevent pollution of the marine environment should be carried out between States either directly or through the competent international organizations, bearing in mind the technical and financial possibilities of the parties concerned. A good system of monitoring to prevent marine pollution, however, needed resources and efforts which were not within the reach of countries relatively lacking in resources, and therefore it would also be necessary to give technical and other assistance to the developing countries.

56. Concerning the draft articles worked out by Working Group 2 of Sub-Committee III as set forth in volume I of the 1973 report of the sea-bed Committee his delegation felt that it would be necessary in the unofficial meetings to improve certain of the variations, in order to find formulae that could be more widely accepted and to reach an agreement.

57. Mr. KNOKE (Federal Republic of Germany) said that the different sources of pollution should be dealt with in different ways and should be subject to different legal arrangements. His country was bordered by two seas, the North Sea and the Baltic, both of which, because of ecological and other circumstances, were in grave danger. It had therefore given urgent priority to the task of combating marine pollution and preserving the resources of the sea, and had taken an active part in all international and regional efforts to that end. It was, for example, on the initiative of the Government of the Federal Republic of Germany that the first regional Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil, known as the Bonn Agreement of 1969, had been concluded. In its national legislation the Federal Republic had laid special stress on two problems: first, the reduction and prevention of land-based pollution, the most serious source, and, secondly, the question of vessel-source pollution.

58. With regard to land-based pollution, his country wholeheartedly supported recommendation 92 of the United Nations Conference on the Human Environment,³ held in 1972 at Stockholm, that Governments should speedily draw up effective national regulations to deal with land-based pollution, concert those measures on a broad international basis within the framework of the Third Conference on the Law of the Sea, and co-ordinate their action at the regional level.

59. In his delegation's view, the Conference's main task with respect to the preservation of the marine environment was to improve and develop the international and regional conventions on vessel-source pollution concluded in recent years. The Federal Republic of Germany was a country with an extensive export trade, two thirds of which was carried on by ships under foreign flags, to a large extent via ports in neighbouring countries. It also had a considerable merchant marine of its own. It could therefore not countenance unjustified interference in international maritime trade or the freedom of navigation which was the essential prerequisite of such trade and hence of concern to the whole community of nations. A balance must be

³ *Ibid.*, chap. II.

sought between the requirements of measures to combat marine pollution and those of unimpeded trade between the continents.

60. Obviously, regulations required to deal with pollution and provisions concerning areas with special ecological conditions must be established by the community of nations through a competent international organization. His delegation pledged its support in that endeavour and was prepared to take into account the interests of the coastal States bordering areas with special ecological conditions.

61. With regard to enforcement measures, his country believed that the flag State was the one best able to ensure compliance with anti-pollution regulations, since that was the State which, by granting the right to fly its flag, decided whether a ship might engage in commercial activities. However, since experience had shown that not all flag States had been equally vigilant in carrying out their regulatory duties, his country would support all efforts to introduce supplementary measures in that regard. The principal aim of the Conference with respect to the protection of the marine environment should be to minimize the risk of intentional or accidental pollution of the seas and thus eliminate as far as possible the need for measures to deal with pollution once it had happened. An obligation might therefore be created on the part of the flag State to deny ships which did not comply with international regulations concerning construction, equipment and operation the right to fly its flag, and to make the flag State liable for marine pollution incidents caused by ships to which it had issued certificates incorrectly attesting compliance with the regulations. To supplement those obligations, there might be established, along

the lines of the 1969 International Convention on Civil Liability for Oil Pollution Damage, a right of the port and coastal States to deny entry to their ports and passage through their coastal waters to ships which could not produce certificates.

62. Where substantial marine pollution had taken place, coastal States could also be authorized, as under the 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, to carry out preliminary investigations in parts of the high seas adjacent to territorial waters on ships encountered near the site of the pollution incident. However, there was no need to accord coastal States exclusive investigatory powers within a certain delimited area of the sea. On the contrary, the creation of such powers not limited to particular areas would facilitate investigation and provide an incentive for the setting up of co-operative inspection systems on a regional or bilateral basis. In addition, such regulatory powers could be supplemented by granting the investigating coastal State prosecutory powers in cases where, although violations had been established, the flag State had failed to prosecute.

63. The question of ocean dumping, in his delegation's view, constituted a far greater hazard to the marine environment than vessel-source pollution, and much more extensive rights could therefore be accorded to the coastal States with regard to the control of authorized dumping and the prosecution of illicit dumping activities. For those reasons the Federal Republic of Germany was ready in principle to accord the coastal States effective powers regarding on-the-spot detection of violations of international dumping regulations.

The meeting rose at 1 p.m.

6th meeting

Wednesday, 17 July 1974, at 3.15 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Preservation of the marine environment (*continued*)

[*Agenda item 12*]

1. Mr. LO Yu-ju (China) said that his delegation resolutely supported the many representatives who had set forth their solemn and just stand in defence of State Sovereignty against maritime hegemony.
2. The increasingly serious pollution found in some sea areas was mainly the consequence of the policies of aggression and plunder pursued by imperialism and especially by the super-Powers, and the victims of their policies were the numerous developing countries. Proceeding from their rapacious and egoistical position, the super-Powers and monopoly capitalist groups obdurately sought high profits and, disregarding the safety of the people of their own countries and of the world as a whole, discharged large quantities of industrial wastes and fluids and toxic, harmful and even highly poisonous substances into the seas, thereby poisoning sea waters, damaging living resources, and seriously endangering the health and safety of the peoples of the world.
3. In such circumstances, it was absolutely just that the coastal States should rise in self-defence and take measures to protect their marine environment and natural resources against pollution from outside sources. Prompted by the urge to maintain their maritime hegemony, however, the super-Powers frenziedly opposed the legitimate rights of coastal States and attempted under the pretexts of "international standards" and "global measures" to deny the jurisdiction of those States and

their role in the prevention and control of marine pollution. It was only natural that such attempts should have met with firm opposition by the numerous developing countries.

4. It was admittedly necessary to establish, through joint consultations on the basis of equality of all countries, big and small, an international or regional régime for the preservation of the environment and the prevention of pollution. But that could in no way substitute for anti-pollution regulation by coastal States. It was impermissible to use so-called "international standards" and "global measures" to oppose or weaken the jurisdiction of the coastal States and to restrict the economic and industrial development of the developing countries.
5. Each coastal State had the right to formulate its environmental policy and take all necessary measures to protect its marine environment and prevent pollution in the sea area under its national jurisdiction. In doing so, the coastal State should, of course, have regard to the interests of all, including those of its neighbouring countries.
6. All States, especially the industrially-developed countries, had the duty to take all effective measures to solve their problem of the discharge of harmful substances, and to prevent pollution of the sea areas under their jurisdiction from spreading to, and damaging, the marine environment of sea areas under the national jurisdiction of other States, or of international sea areas.
7. International anti-pollution measures and standards should be adopted, and appropriate international regulation

should be enforced for the marine environment of the international sea area. Discharge of radioactive and other harmful substances into that area must be strictly prohibited.

8. Finally, all States and concerned international organizations should strengthen their co-operation in conducting anti-pollution research, following the principles of respect for sovereignty, equality, and mutual benefit, so as to promote the exchange and the utilization of anti-pollution technology and data.

9. Mr. SADEGHI (Iran) said that despite action by States at the national, regional and international levels and work by United Nations agencies, the marine environment continued to be threatened. Areas close to the coast under national jurisdiction were particularly in danger, and marine pollution was therefore best controlled by coastal States.

10. Iran was adjacent to one of the bodies of water which the 1973 International Convention for the Prevention of Pollution from Ships concluded under the auspices of the Inter-Governmental Maritime Consultative Organization (IMCO) had declared a "special area" requiring more stringent protective measures. He had therefore listened with particular interest to those representatives, particularly the representative of Finland at the 4th meeting, who had stressed the need for adequate regional and international action against marine pollution in enclosed seas. The 1974 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area (see A/CONF.62/C.3/L.1) was a good model of a regional agreement, and he hoped that similar regional arrangements could be made in the region to which Iran belonged. He was therefore encouraged to note that the Kuwaiti Government had invited coastal States to a conference in the near future, and hoped that that conference would be the first step toward a regional agreement.

11. Such a regional agreement should not necessarily be confined to preservation of the marine environment and could also provide, for example, for the establishment of a regional fund to cover accidental or inadvertent damage to coastal States. The 1971 International Convention on the Establishment of an International Compensation Fund for Oil Pollution Damage, should, in Iran's area, be supplemented by agreements between coastal States.

12. Pending the entry into force of recent international agreements, Iran had considered it necessary to extend temporarily its domestic regulations on the prevention of marine pollution in the area adjacent to its coast, up to the outer limit of its continental shelf. He hoped that the conference of coastal States which he had mentioned would find regional solutions to that problem.

13. His delegation's sponsorship, with others, of the proposals contained in document A/AC.138/SC.III/L.56 reflected its belief that more stringent rules should be established for special areas adjacent to coasts, particularly with regard to pollution arising from exploration and exploitation of the sea-bed. However, that did not mean that the responsibility of flag States should be reduced; they should remain responsible for any infringements of international anti-pollution rules.

14. Pollution originating beyond areas of national jurisdiction should be within the competence of the International Sea-Bed Authority which he hoped would be established. That Authority should also have regulatory powers over pollution caused by exploitation and exploration of the sea-bed under national jurisdiction, excluding the territorial sea.

15. Miss EMICH (Austria) said that the 1958 Geneva Conventions had dealt with only a few aspects of marine pollution; they were inadequate with regard to pollutants other than oil and radioactive wastes, and with regard to questions of enforcement and compensation. Her delegation welcomed the international activities which had taken place since 1958, and felt that the establishment of a global pollutant-monitoring pro-

gramme and of co-operation in identification and control of pollutants were particularly important. Existing law on the prevention of marine pollution had proven to be inadequate, and it was therefore essential that the Conference should establish new international norms.

16. Austria, like all other land-locked countries whose ecological security was not immediately threatened by marine pollution, was nevertheless highly interested in marine pollution problems, since the global character of the oceans made marine pollution potentially catastrophic to all countries. All countries had to co-operate, at the local, national, regional and global levels in finding adequate solutions. However, those solutions must not impede international navigation, to which her country attached great importance.

17. A useful start in controlling land-based pollution, which was the largest source of pollutants, had been made by the United Nations Conference on the Human Environment, held at Stockholm in 1972 in its recommendation 92¹ for the speedy enactment of national regulations. Pollution resulting from sea-bed exploitation, although now minor, would increase, and it was therefore appropriate to protect against it now through regulations drawn up by an international authority. Those regulations should cover the high seas and an area outside territorial waters but, in the latter area, stricter rules, elaborated at the international level, could be applied by coastal States.

18. Her delegation shared the view expressed by others that vessel-based pollution was best controlled through a single set of uniform international regulations observed by all States, so that vessels would not have to comply with different standards in different areas. There was, however, a need for international regulations to cope with the special ecological circumstances of particular regions. Those could be worked out either by an already existing, technically competent, international organization or by a newly-established International Sea-Bed Authority. A supervisory function concerning vessel-caused pollution should be exercised by the International Authority in the area under its jurisdiction, whereas in the area outside territorial waters a balanced system should be established which took into account the interests of the coastal State, the flag State, and the international community. The International Authority should be responsible for the settlement of disputes and for compensation claims arising from pollution damage.

19. Her delegation had difficulties with some of the ideas in the proposals contained in documents A/AC.138/SC.III/L.27, 28 and 56 in their existing form. It was prepared to support some of the ideas expressed in documents A/AC.138/SC.III/L.32, 33, 35 and 40, but could not support the "zonal approach", as it felt that the goal of implementing the common heritage of mankind could not be achieved through accumulated national jurisdictions. Her delegation believed that the various draft articles prepared in Working Group 2 of Sub-Committee III of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction showed a great deal of similarity, and that the remaining differences could be worked out in informal meetings. The Committee should begin its work with problems which had not been discussed in the sea-bed Committee.

20. Mr. LEON DUEAS (Ecuador) said that the statement by the Canadian representative at the 4th meeting had been a particularly valuable contribution to the work of the Committee. He regretted only that that representative had failed to refer to the concept of a broad territorial sea in mentioning areas of agreement and disagreement in the work of the Conference.

21. Ecuador believed that all States had a duty to prevent and control pollution, and a legitimate interest in doing so, in order

¹ See *Report of the United Nations Conference on the Human Environment* (United Nations publication, Sales No. E.73.II.A.14), chap. II.

to preserve the marine environment as a basic tool of subsistence and economic development. That principle had led Ecuador to join in sponsoring the proposals submitted to the sea-bed Committee in document A/AC.138/SC.III/L.47 and Corr.1.

22. Since pollution was a problem which affected all States, all States should enact national legislation to combat it, taking into account their degree of development and ensuring that the measures they took did not shift the effects of pollution from one area to another. States likewise should be held responsible for damage to the marine environment of other States or to the high seas caused by dumping from their territory, in waters under their jurisdiction, or from ships flying their flag.

23. A coastal State's right to define the limits of its territorial sea up to 200 miles entailed the right to enact necessary provisions for preservation of the marine environment in the area under its sovereignty and national jurisdiction, taking into account its own interests and those of the international community. However, action by individual States did not rule out broad international co-operation, which should establish regional bodies in areas with geographical similarities to centralize and co-ordinate preservation and protection of the marine environment. Both regional bodies and individual States should seek the co-operation of competent international organs in drafting and implementing rules for areas outside national jurisdiction, and in making recommendations concerning areas within national jurisdiction. Such co-operation should be channelled through the centralized International Sea-Bed Authority that was under study in the First Committee.

24. Mr. JEANNEL (France) said that the Conference should confine itself to elaborating general principles for protection of the marine environment, and leave detailed rules to specialized bodies which had the proper technical facilities.

25. The Conference should, however, examine jurisdictional problems relating to marine pollution, i.e. the allocation of powers between the international community on the one hand, and various categories of States, such as flag and coastal States, on the other. In that regard, the texts prepared by the sea-bed Committee, although they could be improved, seemed to be a good beginning.

26. Different approaches should be taken to different kinds of pollution. Land-based pollution required commitments by States to enact measures which took into account international standards. Regional co-operation clearly permitted the most effective type of action for that kind of pollution, as was shown in particular by the 1974 Paris Convention for the Prevention of Marine Pollution from Land-based Sources and the 1974 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area. The encouragement of regional agreements was also the most effective way of combating pollution resulting from exploitation of portions of the sea-bed under national jurisdiction, although for that type it might be useful to allow for minimal international regulations, leaving States free to adopt, individually or collectively, stricter rules applicable to activities carried out in their jurisdictions. Pollution arising from exploitation of the sea-bed outside the jurisdiction of coastal States should be examined in close connexion with the question of an international régime.

27. The prevention of pollution arising from dumping from ships and aircraft called for both an international and a regional approach. The 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and the Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft provided good examples of the method that could be followed. Accession to existing conventions should be encouraged, as they contained a wealth of useful provisions.

28. Rules concerning pollution resulting from deliberate acts on board ships must be international, since uniformity was

indispensable in order to prevent ships from being subject to a multiplicity of rules. Unilateral coastal-State regulations against vessel-based pollution, such as prohibitions against discharging certain substances or rules concerning tanker construction, would interfere unjustifiably with freedom of international communication. That did not mean that regional agreements, applicable only to ships of the States which were parties to them, could not lay down stricter requirements. Moreover, certain particularly sensitive regions—such as enclosed, semi-enclosed and Arctic areas—could be declared special areas, as had been done in the 1973 London International Convention for the Prevention of Pollution from Ships adopted under the aegis of IMCO. That should be done within the framework of an international agreement, and measures taken by coastal States should be approved by an international body, as the London Convention provided with regard to certain areas.

29. The enforcement of international regulations in waters outside the territorial sea posed a different problem. Rather than applying only the law of the flag State, leaving the coastal State helpless in the face of violations committed near its territory, the coastal State should have the right of intervention to enforce international rules in a specified zone adjacent to its territorial sea, under specific conditions. That was the solution proposed in the draft articles contained in document A/AC.138/SC.III/L.46, submitted to the sea-bed Committee in 1973.

30. His delegation believed that there should be two well-defined exceptions to application of the law of the flag State: the coastal State should be entitled to verify the violation and report it to the courts of the flag State if it had serious reason to believe that the violation had been committed. It should also be entitled to prosecute the offender in its own courts if the flag State failed to do so. That solution was an effective one, since the flag State often had no interest in prosecuting the offender, and the coastal State was often in the best position to verify commission of the offence. It was also a solution which preserved freedom of communication, since the ship should be stopped only during the time strictly necessary to verify commission of the offence. Since such provisions could lead to disputes, a compulsory settlement procedure for disputes between coastal States and flag States or States of registry had been proposed in the document to which he had referred.

31. Prevention of accidental pollution caused by ships required improvement of marine transport regulations and of the technology of construction and use of ships. That kind of pollution could also call for intervention by coastal States outside their area of sovereignty, if there was an imminent and certain danger to their coast. Thus, the 1969 Brussels International Convention on Civil Liability for Oil Pollution Damage set forth well-defined conditions in which the coastal State could intervene on the high seas, and IMCO was studying the extension of the provisions of that Convention to harmful substances other than hydrocarbons.

32. Warships and other State-owned ships should enjoy the same immunities that they had always had in the past.

33. His delegation saw no reason to depart from the conventional rules on State liability in international law, particularly civil liability for acts of nationals in the performance of their activities. That problem should be dealt with in specific conventions which, like the 1969 Brussels Convention, ensured victims the compensation they needed to repair the damage, without implicating the State.

34. Mr. BARRA (Chile) said that, while his country was fully aware of the need to reach agreement on pollution control measures, it was seriously concerned lest an indiscriminate policy of applying general rules, without taking account of the level of development of individual countries, might hinder their progress.

35. His delegation considered that the item of marine pollution should be divided into aspects relating to the high seas, and those relating to the territorial sea and the 200-mile economic zone. Views of delegations appeared to have become polarized in accordance with two opposing principles—the jurisdiction and sovereignty of the coastal State and of the flag State respectively.

36. The other important issue was whether the same anti-pollution standards should apply to both developed and developing countries.

37. The traditional idea of accepting the jurisdiction of the flag State was apparently being abandoned in favour of a new formula permitting the coastal State to exercise jurisdiction in the areas under its sovereignty or control, while at the same time accepting certain, sufficiently wide, international pollution control measures. His country's position on that point dated back to 1947, as confirmed in 1952, to the effect that it exercised jurisdiction over a zone 200 miles wide adjacent to its coast, within which it exercised exclusive jurisdiction over resources, scientific research, pollution control and marine installations, without prejudice to freedom of navigation and overflight. Consequently, jurisdiction with regard to pollution was an integral part of the concept of the economic zone. Hence his country's opposition to the attitude within certain international organizations taken by the great maritime Powers which sought to deny coastal States their jurisdiction beyond the territorial sea.

38. From his country's point of view, a jurisdiction extending outwards for 200 miles for the purposes of pollution control was very important and could be compatible with international standards, provided different criteria were formulated with regard to the developing countries so as not to hinder their progress. Such international standards must clearly be acceptable to the developing countries and, to that end, they must be adopted in an appropriate international forum. While IMCO was undoubtedly technically competent to consider the question of pollution, it should be pointed out that, for the purposes of negotiating conventions, that body was insufficiently representative, since it consisted of few developing countries and was largely controlled by the great maritime Powers. There was accordingly a need—without affecting its technical competence or trying to convert it into a political forum—to modify its statutes by making it more representative for the purposes of preparing the relevant conventions.

39. Any standards adopted, particularly those relating to ship design, should take account of the capabilities of the developing countries, which should not be required to meet the same standards as did the developed countries—which, in the final analysis, had caused the existing pollution.

40. As to the area beyond the limits of the 200-mile patrimonial sea, international agreements should ensure the utmost degree of pollution control, to be exercised by a duly representative international body. His country supported the struggle against pollution in all its forms and was ready to adopt national measures to that end within the limits of its national jurisdiction, on the basis of regional or international agreements.

41. There must be no freedom to pollute the high seas, which must not be used for carrying out nuclear tests and discharging toxic gases. Drastic sanctions must be imposed in cases of pollution by tankers, such as those from which his country had suffered.

42. The law of the sea was an integral whole and its elements could not be separated. His delegation therefore opposed the elaboration of general principles of marine pollution-control in a forum other than the current Conference.

43. Mr. IORDANESCU (Romania) said that, in its efforts to combat pollution, his country had adopted national measures, including the establishment of special bodies. It took the view

that urgent action must be taken at both the national and international levels, otherwise the seas and oceans could not absorb the increasing level of pollution. The subject was, however, extremely complex, since a wide range of geographical characteristics, the existence of special zones, and the vital interests of individual countries, particularly those of the developing countries, all had to be taken into account.

44. The work of Sub-Committee III of the sea-bed Committee provided the basic principles and variants of draft articles which would facilitate the Third Committee's task.

45. In order to ensure the effectiveness of any rules adopted, States must be obliged to take all measures necessary to prevent marine pollution, whatever its source, such measures, depending on the circumstances, to be adopted either individually or jointly. At the same time, States must ensure that activities pursued within the limits of their jurisdiction did not constitute a source of pollution harmful to another State. His country supported the incorporation of provisions for that purpose in the variants of the text proposed or supported by other developing countries. For the purpose of pollution control, world and regional co-operation and technical assistance were essential.

46. With regard to continued surveillance, his delegation supported the proposal whereby, in order to determine whether a State had discharged its obligations in connexion with terrestrial sources of marine pollution, due account must be taken of all pertinent factors, particularly the economic and financial ability of that State to provide the necessary resources to fulfil those obligations.

47. A question of particular interest to his country, since the Black Sea, for various reasons, was extremely susceptible to pollution, was the prevention of pollution in closed or semi-closed seas—for which special rules were required, including the designation of such seas as special zones. The special status of the Black Sea had been recognized in certain international conventions, the provisions of which should be reflected in the convention to be elaborated by the Conference.

48. The powers of coastal States, based on general international rules, could ensure the harmonization of interests with regard to both the protection of the marine environment and international shipping.

49. His delegation pledged its active co-operation in elaborating acceptable rules for all countries.

50. Mr. BUSTANI (Brazil) said that his delegation fully subscribed to the guiding principles on marine pollution in the Declaration adopted by the 1972 Stockholm Conference,² which should be incorporated in the convention to be drafted by the Conference. There was an unquestionable need to adopt national protection measures to prevent pollution in accordance with individual capabilities and national environmental policies and through co-operation with other States and international bodies in developing minimum international anti-pollution standards.

51. As to pollution arising from activities both on land and on the sea-bed under national sovereignty, his Government had adopted adequate measures and sanctions against the infringement of existing regulations. Aware of the need to preserve its own environment and that of its neighbours, Brazil exercised its sovereign competence to establish, enforce and control the application of pollution-prevention standards.

52. Turning to pollution from ships, he said that his delegation favoured the adoption of international standards for vessel-source pollution relating to ship design, construction, equipment, operation, etc., to the extent that they were not detrimental—by being too sophisticated—to the development of the merchant marine of developing countries. He welcomed IMCO's work in drafting the 1973 International Convention

² *Ibid.*, chap. I.

for the Prevention of Pollution from Ships. Nevertheless, certain aspects remained to be resolved; one of them related to the concept of "new ship" which determined to which vessels the new requirements would apply. His delegation would prefer the adoption of more extended and flexible deadlines or schedules for the implementation of such new standards, especially by ships of the developing countries.

53. The enforcement of such standards should fall primarily within the competence of the coastal State itself in areas adjacent to its coast and within its jurisdiction and sovereignty.

54. His delegation accepted the concept of special areas where, for recognized technical reasons, the adoption of special anti-pollution methods were required. That was coherent with principle 11 of the Stockholm Declaration, which held that internationally agreed criteria and standards should provide for regional and local variations in the effects of pollution and in their evaluation.

55. As to the pollution arising from the exploitation of the international ocean floor, the competent Authority to be established should have full competence to legislate on the matter as well as an important degree of competence with regard to pollution arising from navigation on the high seas.

56. As to the settlement of disputes concerning the interpretation or application of a future convention on the prevention of marine pollution, his delegation would favour general provisions on peaceful settlement through negotiation, conciliation and the like. While his country could not regret having accepted, in the past, compulsory settlement of disputes, recent experience had shown that such a procedure had not proved adequate. Further study of the matter was required before an adequate and just solution was found.

57. Mr. McCOMIE (Barbados) said that the prevention of marine pollution was essential to the very survival of the people of Barbados. The island of Barbados, because of its geographical situation, was particularly vulnerable to the effects of pollution arising in mid-Atlantic and, furthermore, was well placed to monitor pollution levels. The alarming levels of pollution in mid-Atlantic constituted a potentially serious threat to the fisheries and tourist industry of the island. Indeed, while certain areas of the world were, because of various factors, much more vulnerable than others, the very survival of mankind was ultimately at stake. Accordingly, it was his delegation's fervent hope that positive pollution control measures would emerge from the current session.

58. Marine pollution did not respect national boundaries and his country therefore supported the establishment of certain minimal international measures for pollution prevention and control to protect coastlines. While recognizing that weak measures were pointless, Barbados, as a developing country, could not be party to standards so high that they impeded its industrial development or that of other States of the third world. It was also necessary to take account of the essential service provided by world shipping, which could be seriously hampered by any radical tightening of standards. Nevertheless, the gravity of the marine pollution problem demanded sacrifices from all: any victory for freedom of navigation would be a hollow one if it meant freedom to navigate in sewers. The only viable solution was the adoption of effective control measures on a universal basis as soon as possible.

59. His delegation supported the zonal approach set forth in document A/AC.138/SC.III/L.56, to which the representative of Canada had referred. As the Minister for Foreign Affairs of Barbados had stated during the general debate, the coastal State must have sovereign powers in respect of marine pollution in its zones of national and economic jurisdiction.

60. Problems arose in connexion with liability, one of which was identification of the guilty party, especially in the case of pollution from land-based sources. Moreover, even if culpability was established, the offender might be unable to make

full restitution. His country therefore supported the draft articles on responsibility and liability submitted by Trinidad and Tobago in document A/AC.138/SC.III/L.54.

61. His delegation wished to congratulate the Executive Director of the United Nations Environment Programme (UNEP) for his excellent resumé of the problems of marine pollution and for the proposals which he had placed before the Conference at the 31st plenary meeting. While his delegation could agree with many of those proposals, it could not support the proposal under which States would be liable for damage caused to the marine environment by their own activities, those of their nationals or others under their control or registration. His delegation did not believe that exclusive liability should rest with the States concerned since, in many cases, the State would have to assume liability for gross negligence by a private concern and the effects therefrom, and there were fundamental moral and legal objections to such a principle.

62. Mr. HERNANDEZ DE ARMAS (Cuba) said that the preservation of the marine environment was one of the central tasks facing the Conference. If the world were transformed into a biological desert, few countries would retain the militant attitude with which they currently defended their positions.

63. Pollution was undoubtedly the most recent outcome of the long process of development of industrial society. All were partly responsible for the preservation of the marine environment; there was no doubt, however, that the current situation was the outcome of the unfettered development of capitalist industrial society. In addition to marine pollution from land-based sources in the developed countries, pollution was also caused by installations in the under-developed areas of the world operated by transnational imperialist corporations. For example, in the colony of Puerto Rico, with its atomic and petrochemical installations, the vegetation of vast areas has been destroyed and an alarming level of genetic mutations was affecting new generations. The high level of pollution in the United States—a fact acknowledged by its President himself—had even affected the neighbouring States of Canada and Mexico; to that must be added the pollution produced by its ships and aircraft, and by its policies of ecocide and biocide pursued in Indo-China.

64. In the light of the foregoing, the responsibility of the developing countries was very limited. While their share in responsibility for combating pollution could not be denied, they were not principally responsible and should not therefore be required to impede their own development by specific pollution-control measures.

65. His delegation took the view that general pollution-control measures should be primarily of an international nature, mandatory upon all States irrespective of their geographical situation, and aimed specifically at preventing and avoiding pollution from land-based sources, which was the most prevalent. The relevant standards should be contained in an international convention, account being taken of the special characteristics of various States.

66. Turning to the question of vessel-source pollution, he commended the specialized work carried out by IMCO which, in the view of his and many other delegations, should be recognized as the competent international organization on the subject for the preparation of international conventions for the prevention of pollution from ships. Similarly, mandatory international rules should be adopted with a view to avoiding a proliferation of national laws on the subject, thus helping to combat certain discriminatory or unrestricted practices.

67. The Conference should therefore endorse the conventions on marine pollution and on the safety of human life at sea which had been prepared under the auspices of IMCO, and which could constitute principles within the full meaning of international public law, with provision for sanctions against the violation of their provisions.

68. The new convention on pollution currently being drafted must guarantee freedom of navigation beyond the limits of territorial waters and through straits used by international shipping. In that connexion, the rights of States to ensure the prevention of pollution that might harm their interests should be exercised within their territorial waters; beyond those limits, their interest in the application of international pollution control measures should not hamper freedom of navigation; nor should it enable an individual State to apply restrictive or repressive measures against a ship, thus impeding its free passage. The unlimited extension of the right to prevent pollution beyond the limits of the territorial waters would affect a large number of international straits and channels which would thereby fall under national jurisdiction, to the detriment of international shipping. If freedom of navigation through international straits and canals were to be restricted, there would be an increase in areas of conflict and sources of tension.

69. With a view to preventing pollution within their waters, States should be empowered to apply numerous measures, including fines and preventive inspection measures; States should, however, respect the principle of sovereignty of flag States under which, in the interests of the international community, no members of the crew of a foreign vessel should be detained; in the event that sanctions that were stricter than fines were called for, the flag State should be informed so that it could impose stricter penalties, such as deprivation of liberty, it being required to communicate the nature of the sanction in question to the other State.

70. His delegation also took the view that preventive inspection measures should not unduly delay or endanger the vessel. States should also be required to respect the principle of the sovereign immunity of vessels, in accordance with international law and practice.

71. Control measures imposed to prevent pollution from land-based sources, which gave rise to the greatest number of conflicts, were related to the sovereignty of States; most of those conflicts were caused by the developed capitalist States, which failed to take account of the interests of other States.

72. The Conference should seek to establish a body that would regulate maritime activities, including pollution. Such an authority should have the necessary competence to investigate and resolve conflicts arising among States, or between States and international organizations such as IMCO and UNEP, in waters under the jurisdiction of States.

73. Mr. YTURRIAGA BARBERAN (Spain) said that the new convention should contain not merely a statement of principles on the marine environment but a series of basic articles on pollution control and the preservation of the marine environment, which could later be supplemented and developed by regional or specialized agencies.

74. His delegation believed that the Committee was competent to discuss all matters of pollution in all marine areas. It rejected the idea of postponing discussion of substantive matters such as the jurisdiction of States to yet another conference.

75. The articles in the convention should be based on four principles: the duty of States to protect the marine environment; the duty of States to co-operate at the international level; the right of coastal States to self-protection; and international liability. The first two principles had been adequately covered by the texts prepared by Working Group 2 of the sea-bed Committee.

76. From the duty to protect the marine environment—described by the Spanish delegation as a rule of *jus cogens*—was derived the obligation of coastal States to make suitable arrangements to prevent and eliminate large-scale pollution, from whatever source, and to punish violations of those arrangements. From the duty of international co-operation was derived the need to exchange scientific data and knowledge and to provide assistance to the States concerned.

77. According to paragraph 17 of the principles elaborated by the Intergovernmental Working Group on Marine Pollution held at Ottawa in 1971,³ the coastal State was responsible for protecting the environment in the zones adjacent to its territorial sea, but the meeting had been unable, owing to lack of time, to consider the corresponding rights of the coastal State—particularly the right to protect itself against pollution risks. The principal corollary of that was the right of States to establish, beyond their territorial sea, a marine environment protection zone over which they exercised functional jurisdiction. The Spanish delegation therefore supported document A/AC.138/SC.III/L.56. The principle of international responsibility covered both the prevention of risk and the determination of adequate compensation in the event of damage. He strongly supported the international adoption of rules concerning the preservation of the marine environment, although he believed that those rules did not have to be exclusively international and that certain residual powers of the coastal State should be recognized. He recalled that at the Ottawa meeting his delegation had put forward a text to the effect that States must adopt suitable anti-pollution measures in accordance with internationally recognized standards, in the absence of which coastal States might adopt reasonable and non-discriminatory measures. On that subject, a suitable text had been submitted at the Ottawa meeting by the delegation of Canada.

78. With regard to implementation, he endorsed the Tanzanian delegation's view, expressed at the 4th meeting, that international standards must be accompanied by sanctions to cover cases of violation. He found it difficult to understand why certain delegations, while agreeing to the need for international standards, opposed the application of them by coastal States.

79. His delegation opposed the idea of the jurisdiction of port States for such States could not exercise universal jurisdiction over incidents which occurred many miles away and with which they had no personal or territorial link.

80. His delegation believed that there must be internationally agreed standards to cover all sources of marine pollution. Good work on vessel-based pollution had already been done, notably by IMCO.

81. As far as pollution from exploitation of the sea-bed was concerned, a distinction must be drawn between the sea-bed beyond the limits of national jurisdiction, which was also being dealt with by the First Committee, and the sea-bed within the limits of national jurisdiction. For both areas international regulations would have to be adopted.

82. With respect to land-based pollution, his delegation understood the anxieties of the developing countries, whose industrialization would necessarily involve a certain amount of pollution. A regional approach should therefore be adopted on that subject, as in the 1974 Helsinki and Paris Conventions.

83. As for the matter of competences, it was essential to co-ordinate the activities of the various international and regional bodies concerned with pollution, and in that connexion his delegation endorsed principle 25 of the Stockholm Declaration. It believed that the most appropriate organization to carry out the co-ordination work was the United Nations Environment Programme.

84. Mr. ALTAIF (Libyan Arab Republic) said that his country, which had a coastline 2,000 kilometres long, took marine pollution problems very seriously, especially because it was planning the use of sea water for drinking and agriculture to compensate for its shortage of fresh water.

85. Co-operation among all States was necessary in order to prevent marine pollution, and national laws were needed which gave States the right to intervene in order to prevent pollution.

³See *Report of the United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.73.II.A.14), annex III.

86. Checking points should be set up in order to verify that ships were complying with international regulations concerning pollution. Regional conferences should be held to reach agreement on pollution problems. Further, all States should try their best to finance the construction of tanks to receive waste material from ships. Libya's petroleum port Marsá al Burayghah was already equipped with such tanks, and other Libyan petroleum and commercial ports were constructing them.

87. Libya had acceded to a number of major anti-pollution conventions and had enacted domestic laws in accordance with them. It had also organized scientific training courses on pollution problems. His delegation was thus prepared in every respect to co-operate in reaching successful results in the fight against pollution.

88. Mr. KAKODKAR (India) said that the Committee's mandate was a crucial one, since most of mankind's environment related to the sea. India itself had a long coastline, and a great deal of international navigation engaged in the carriage of oil and other pollutants passed near to its shores. Its merchant fleet was steadily growing. It therefore viewed the problem of prevention and control of marine pollution not only as a coastal State but also as a steadily growing maritime State. Those two aspects of the problem needed to be reconciled, and the Indian proposals would attempt to harmonize them.

89. His delegation believed that the problem of marine pollution should be tackled with reference to its source and at the regional level, particularly in critical regions, although the importance of the global aspects must not be underrated.

90. For land-based pollution as well as for the prevention and control of marine pollution in the pollution-control zone coextensive with the economic zone of a coastal State, standards should be national ones which took into account, and as far as possible incorporated, international standards on the subject, so as to promote uniformity. In that connexion he suggested that international organizations should draw up two sets of standards: first, mandatory standards which would be applicable in any State accepting them, and secondly, recommended practices of persuasive value, with due regard to the economic burdens for developing countries and the problems of sensitive regions or areas. With regard to vessel-based pollution, including the discharge or dumping of sewage, garbage or pollutants, IMCO should be given competence to establish standards and recommended practices on the pattern of the International Civil Aviation Organization (ICAO). It might also formulate standards and recommended practices for aircraft-based pollution. The question of enforcing standards was closely connected with the concept of the pollution-control zone, which his delegation supported. The limits of the zone should be coextensive with those of the economic zone of a coastal State. Within the zone, the coastal State should have exclusive competence to enforce the standards, national or international, and to stop a transit ship, investigate the violation and take suitable enforcement action. In the international zone, beyond the economic zone/pollution-control zone, the application of standards might be left to the flag State, subject to such powers of supervision, direction and control of the International Sea-Bed Authority as might be agreed at the Conference.

91. Moreover, a State facing the danger or occurrence of marine pollution and a State in the sensitive regional areas in which pollution had assumed critical proportions should be able, individually or collectively with other States of the region, to take appropriate measures of self-protection against intentional discharges or dumping as well as accidental discharges through collision, stranding or fire, for example. With regard to land-based and vessel-based pollution, the State concerned or the flag State, as the case might be, while enjoying complete competence in formulating and enforcing standards after taking into consideration the applicable standards or recom-

mended practices, should be under an obligation to take adequate measures to deal with pollution from those sources. The obligation of those States and that of other entities responsible for marine pollution should be coupled with an appropriate concept of international liability and responsibility, so as to ensure that those States and entities took appropriate action to prevent and control marine pollution.

92. With respect to those aspects which were of importance to the developing countries, his delegation felt that the international standards or other regulations should not impose economic burdens on such countries that they might find difficult to bear. Nor should environmental costs be passed on to them without their consent. Further, adequate financial and technical assistance and training, and the necessary equipment and facilities, should be made available to them to deal with the problem of preventing and combating marine pollution through programmes of international co-operation and by the international organizations concerned. All States should be kept fully informed of the results of monitoring, data collecting and other information, as well as the likely danger or actual occurrence of pollution in the marine areas or regions adjacent to them.

93. Much useful preparatory work had been done by Working Group 2 of Sub-Committee III of the sea-bed Committee. The Third Committee should bear in mind the alternative formulations prepared by that Working Group as well as any new proposals submitted at the current session. The Committee might also like to consider the following items in that connexion: First, the right of States to exploit their resources pursuant to their environmental policies; secondly, coastal State jurisdiction in pollution-control zones and the right to take measures of self-protection; thirdly, international machinery for preserving the marine environment and co-ordination of activities of organizations having competence in that field; and fourthly, promotion of regional agreements.

94. His delegation hoped that, in view of the importance of those matters, the Committee could agree to add them to the list of items already suggested by the Chairman.

95. The CHAIRMAN said that the supplementary items suggested by the representative of India would be considered during the informal meetings of the Committee.

96. Mr. LADJIMI (Tunisia) said that his country was particularly interested in the preservation of the marine environment, because of the intensive maritime trade and off-shore oil activities in the Mediterranean; there was even a grave risk that that sea would shortly become biologically dead. Tunisia's tourist industry and fisheries needed protection. There was a permanent risk of pollution from which no country was immune, and that was because the wrong approach to solving the problem had been adopted. Stringent measures must be adopted and it was natural that those who polluted should pay. International rules were not sufficient to protect the marine environment: national and regional measures were also needed, and all such measures had to be strictly co-ordinated.

97. A coastal State had to protect its exclusive economic zone and must therefore assume full competence over it.

98. As far as vessel-based pollution was concerned, national authorities must lay down certain standards, including the provision of special equipment and the processing of oil residues.

99. He agreed with the delegation of Canada that States should be authorized to apply the provisions of international conventions to ships in their harbours, whatever the area in which the violation was committed. That required a redistribution of competences between coastal States and the various international and regional bodies dealing with the protection of the marine environment, and above all respect for the rules and standards which the Committee would formulate.

100. Mr. BUSTERUD (United States of America) said that there was a growing awareness in the world of the dangers of

marine pollution. States must organize themselves internationally to prevent further degradation of the marine environment. Some organizational difficulties still persisted, but it was clear that there was no difference about the goal to be achieved.

101. His delegation had listened with great interest to the helpful summaries of national positions that had been made, and had been impressed by the spirit of accommodation demonstrated, which boded well for the success of the Committee's work.

102. In view of the fact that the Committee had so few working days left his delegation had decided to defer its substantive comments until the informal meetings on the subject.

103. His delegation's position had already been made plain in the sea-bed Committee, to whose report (A/9021 and Corr.1 and 3) he wished to call the Committee's attention.

104. He hoped that an early start could be made on the remaining topics before the Committee, starting with the enforcement articles and the unfinished work left by the sea-bed Committee. The Third Committee could then return to a reading of all the draft articles, which could then be considered in detail. That, he felt, would be the most effective way of proceeding.

105. Mr. BUHL (Denmark), speaking on behalf of the seven States parties to the Helsinki Convention, proposed that, for the information of the Committee, the preamble, the 29 articles, annexes I to III, and the headings of annexes IV to VI of the Convention, together with a resolution adopted by the signatories, should be circulated as a document of the Committee in the original language, English, and later possibly in the official Russian translation.

106. The CHAIRMAN said he would take it that the Committee agreed to the suggestion.

It was so decided.

107. In response to a question from Mr. YTURRIAGA BARBERAN (Spain), the CHAIRMAN said that to translate those parts of the Helsinki Convention which it was proposed to circulate into all the languages of the Conference would be a lengthy and expensive undertaking. He therefore suggested that the Committee might waive its right to such translations.

It was so decided.

108. The CHAIRMAN announced that the Committee had ended its discussion of item 12, which had been held in an atmosphere of mutual accommodation. Constructive proposals had emerged from the debate, and although the emphasis laid on priorities had varied, some very important general trends were discernible.

109. Clearly, all States were gravely concerned about the mounting danger of marine pollution and the deterioration of the marine environment, and about the urgent need for effective, co-ordinated action. Moreover, it had been pointed out that the scope and extent of coastal and flag State rights and duties with regard to marine pollution control were matters of paramount importance. Reference had been made to the general and particular obligations of States and to the need for an appropriate balance between coastal State and flag State jurisdiction in marine pollution control.

110. There had been general emphasis on the interrelationship between global, regional and national action to prevent or reduce marine pollution, and special reference had been made to regional arrangements such as those provided for in the Helsinki Convention, which had been mentioned as a possible model. International and national regulations or standards had to be dealt with in an appropriate manner.

111. Great stress had been laid on the need for assessment, operational control and enforcement action with respect to the main sources of pollution, namely, land-based pollution, pollution deriving from sea-bed exploitation, vessel-based pollution and dumping. Special reference had been made to particularly hazardous pollutants such as radioactive substances.

112. It had been pointed out that the responsibility and liability of States, particularly flag States, with regard to vessel-based pollution had to be given special consideration.

113. A number of delegations had emphasized the need to make greater use of existing international institutions concerned with the conservation of the marine environment, and to the need for more co-ordination among them.

114. Many delegations had underlined the importance of the progressive development and codification of international law, with special reference to the need for an "umbrella" convention.

115. A number of problems were, however, still outstanding, and differing views had to be reconciled in the Committee's forthcoming discussions. The main objective was to embark on meaningful negotiations, particularly during the forthcoming informal meetings, and to make full use of the preparatory work already done. The Committee now had to work out draft articles on the basis of existing texts and new proposals, to reduce the number of alternatives and narrow down existing difficulties. On that subject he informed the Committee that the Secretariat had now completed the tables of proposals relating to the items on the Committee's agenda.

The meeting rose at 6.15 p.m.

7th meeting

Thursday, 18 July 1974, at 3.30 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Scientific research [Agenda item 13]

Development and transfer of technology [Agenda item 14]

1. Mr. RASOLONDRABE (Madagascar) said that recent technological developments had made large-scale exploitation of the resources of the sea feasible, which was fortunate at a time of growing awareness that land resources were not inexhaustible. The Committee had to decide what legal rules would

regulate the scientific research that was needed to develop marine technology. Some delegations called for total freedom of scientific research by analogy with the principle of the freedom of the high seas. Rejecting that approach, he referred to a recent article in *Le Monde* which pointed out that the choice of areas to be researched was very often determined by subjective criteria and value judgements. Since marine research was and for some time would be carried out almost exclusively by the developed countries, he considered it politically necessary that the subjective element of scientific research should be offset by some provision to ensure that marine research was

used to implement the concept of the common heritage of mankind and take account of the priority needs of the developing countries. The International Sea-Bed Authority should, either by itself or in co-operation with other international agencies, carry on its own research programme, and all other research activities should be subject to its control.

2. With regard to research in the zone under national jurisdiction, he said that research should concentrate on increasing knowledge of the marine environment to enable the coastal State to benefit from local resources and to fulfil its obligations with respect to conservation and prevention of pollution. Foreign researchers did not always restrict themselves to pure research; usually their research was directed either towards discovering and exploiting new raw materials or was related to military or paramilitary considerations. There was no real difference between fundamental research, applied research and strategic military research. Accordingly, he could not accept any system in which foreign researchers would simply have to give prior notice to the State in whose waters they would carry on research, because the coastal State concerned was responsible for the area. His country, however, was open to any form of co-operation and mutually agreed assistance.

3. With regard to the question of training, he endorsed the position adopted at Nairobi in March 1974 by the Group of 77 which recommended that existing international agencies and the International Sea-Bed Authority should draw up programmes for training personnel from developing countries in marine technology, using the knowledge and expertise of the advanced industrialized countries, which should be urged to co-operate fully to ensure the success of the programmes.

4. Mr. MITSCHKA (German Democratic Republic) said that, in the interests of conservation and the peaceful utilization of the seas, States should co-operate in scientific research on conservation and the economic utilization of the seas in the interests of all mankind; the obligation of States to co-operate should *expressis verbis* be included in a future convention on the law of the sea.

5. Freedom of marine research should be understood in connexion with the fundamental principles of international law as contained in the Charter of the United Nations and General Assembly resolution 2625 (XXV). Freedom of scientific research should in no way hamper freedom of navigation. The needs of the developing countries should be taken into account in drafting the legal norms for marine research. International research programmes, co-ordinated by competent international organizations, such as the Inter-Governmental Maritime Consultative Organization, the Intergovernmental Oceanographic Commission, the World Meteorological Organization and the International Atomic Energy Agency could help to promote international co-operation in the exploration of the marine environment. In that connexion, he drew attention to the resolutions adopted at the IMCO International Conference on Marine Pollution in 1973 and to the work programme of the IMCO Marine Environment Protection Committee.

6. It was important to have universally valid and uniform legal regulations ensuring freedom of scientific research in the high seas. The needs of the developing countries should be taken into consideration in planning marine research to help them determine the potential uses of their marine environment. One way of transferring technology would be for States which had the necessary technical means and experience and for competent international organizations to provide assistance to developing countries, while another form of co-operation would be to make available or "pool" existing technical resources.

7. His country made considerable contributions to international oceanological research projects and provided training in marine technology for nationals of developing countries.

8. Mr. VANDERGERT (Sri Lanka) said that arrangements for the investigation of the marine environment, the collection of useful data and its dissemination, particularly among the developing countries, and the rapid transfer to developing countries of the types of marine technology they needed were essential to enable those countries to derive maximum benefit from the wealth of the oceans, to obtain essential protein-rich food from the sea, and to participate fully in the exploitation of the sea-bed beyond national jurisdiction.

9. The right of every State to conduct scientific research in the sea and on the sea-bed beyond the territorial sea should be recognized and should be exercised in such a way as not to impede the exercise of the rights or the performance of the obligations of others in that area. Subject to that basic norm of conduct, there should be no interference with fundamental oceanographic or other scientific research carried out with the intention of open publication referred to in article 5 of the 1958 Convention on the Continental Shelf.¹ The right of a State to carry out scientific research should be subject to the recognized rights of the coastal State within its exclusive economic zone and subject to the rights of the international community in the area beyond. Those rights referred to maintenance of security, preservation of the marine environment, and publication and dissemination of data obtained from research. Rules applicable to the conduct of scientific research would be enforced by the coastal State within its area of jurisdiction, and by a designated International Authority acting on behalf of the international community in the area beyond national jurisdiction. That would help to ensure safe and orderly investigation and perhaps avoid needless duplication of effort.

10. Those rules could include, in the zone within national jurisdiction, prior notice in writing to, and the permission of, the coastal State and submission to inspection by the duly authorized representatives of the coastal State. In the area beyond national jurisdiction the rules might call for written notification to the International Authority and an undertaking that the research was being carried out for peaceful purposes. A State carrying out research in the area under national jurisdiction might be required to collaborate with the coastal State in furnishing it with a statement of its research programme and objectives and permitting a specified number of its nationals to participate in the research activity. In the case of research beyond national jurisdiction, a statement of the research programme and objectives might be required by the International Authority, which should be able to place a specified number of nationals from developing countries with the research project. Data obtained from such research should be turned over to the coastal State or the International Authority subject to appropriate arrangements for publication and copyright. There should, of course, also be rules relating to the safety of personnel, navigational safety and the preservation of the marine environment, including pollution control, liability for damage to, and restoration of, the environment. The rules should be kept to a minimum, should be applied without discrimination and would not, in his view, impede scientific research. In general, no charges should be levied with respect to scientific research, although a refundable deposit might be sought in certain cases against damage or infringement of regulations.

11. A related problem was how to determine what activities would be subject to those rules. There was a difference between scientific research and what might be termed "industrial research", although "pure research" as a legal concept might not be tenable. It should, however, be possible to distinguish between research projects by reference to the degree to which the data obtained could be readily marketed for industrial purposes. A simple objective rule should be devised for application on a non-discriminatory basis. He suggested that "scientific research" for the purpose of granting exemptions should mean

¹United Nations, *Treaty Series*, vol. 499, p. 312.

detailed observation and analytical activity which had as its sole objective a better understanding of the nature and characteristics of the particular area and its resources and the physical environmental factors affecting them, the results of which were intended to be published and were in fact published.

12. With regard to institutional arrangements for the conduct of scientific research on the marine environment and dissemination of the results, he supported a formulation whereby States would, subject always to the rights of the coastal States concerned, undertake to co-operate in the promotion of programmes of scientific research, taking into particular consideration the needs and interests of the developing countries, both coastal and land-locked, and ensure that all data obtained from such programmes would be made accessible to the developing countries.

13. Turning to the question of the transfer of technology, he said that as long as marine technology remained in the hands of a few developed countries, the peoples of Asia, Africa and Latin America would be unable to harvest effectively the resources of the sea which they so desperately needed. In many cases the technology was in private hands, protected by contract as well as by patent and copyright arrangements, and was intended for uses that would produce the optimum commercial gain. The political system would usually make direct governmental intervention to compel transfer of the technology impracticable or very difficult. The Conference should try to achieve a balance between the understandable financial and other considerations that motivated those who currently possessed the technology and the wider social considerations that called for its rapid transfer to the developing countries.

14. Referring to section 7 (Science and technology) of part C of the International Development Strategy for the Second United Nations Development Decade,² and to part IV (Transfer of technology) of the Programme of Action on the Establishment of a New International Economic Order,³ he suggested that provisions for the transfer of marine technology should require States to promote, either directly or through an appropriate intergovernmental organization such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Food and Agriculture Organization of the United Nations (FAO) or the International Sea-Bed Authority, programmes for the rapid transfer of appropriate types of marine technology to the developing countries. The transfer could be made by direct technical assistance, training personnel, convening international conferences on selected technical subjects, joint ventures, trade, ensuring access by the developing countries to patented and non-patented technology under just and reasonable conditions, studying the problems associated with the transfer of marine technology to the developing countries and how to overcome them. As an example of what could be done, he referred to the regional fishery commissions of FAO which showed how technology could be transferred effectively by including appropriate provisions in the terms of reference of intergovernmental organizations or their subsidiary bodies. Another method also used by FAO was to convene technical conferences and to facilitate the exchange of information and ideas. As had been said at the FAO Technical Conference on Fishery Management and Development held at Vancouver in 1973, the two basic elements for development were know-how and the intention of Governments, neither of which was effective without the other; in addition, outside assistance must be provided in harmony with the intentions of the recipient country.

15. It could be said that adopting a new provision on the transfer of marine technology might only serve to adorn some new international instrument with another wordy paragraph, but the mandate of the Committee was limited and it must do

what it could. The developing countries had for many years cried out for technology, but had received in response financial assistance, costly equipment and foreign expertise—everything, in fact, except the technology that was the corner-stone of development.

16. He recalled that at the 1973 summer session of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, the representative of Colombia had suggested that the Secretariat should prepare a study to enable the Conference to establish the main objectives of the transfer of technology and the means for achieving it in a rational and progressive manner. He hoped that the study would be made available as soon as possible.

17. The CHAIRMAN said that the study on the transfer of technology, referred to by the representative of Sri Lanka, had been prepared and would be circulated as soon as possible.

18. Mr. HASSAN (Sudan) referred to the Declaration of the Organization of African Unity on issues relating to the law of the sea (A/CONF.62/33) which asserted the right of all States, irrespective of their geographical locations, to conduct marine scientific research for peaceful purposes without endangering the marine environment. In the view of his delegation, attempts to define scientific research might limit that right or jeopardize attainment of the objective sought. Provided that scientific research was conducted under the foregoing conditions, he saw no valid point in curtailing the ability to acquire more knowledge.

19. His country would have liked to draw a distinction between pure science and applied research aimed at commercial exploitation. However, those two aspects were so inseparably interrelated that to draw a non-existent artificial distinction would be detrimental to both. If the envisaged articles of the convention strongly adhered to the principle that marine scientific research should not form any legal basis for any claim to exploitation rights, the interests of mankind would be adequately safeguarded.

20. His delegation subscribed to the view that scientific research should encompass international political realities and subject itself to agreed regulations. Scientific research in the area beyond national jurisdiction should be conducted in compliance with the spirit and intentions of the concept that the resources of that area were the common heritage of mankind. Accordingly, the Authority to be established should regulate scientific research in the area beyond national jurisdiction, and be responsible for the protection of the marine environment and the prevention of pollution. His delegation supported the proposal calling for the formation of an agency, under the supervision of the Authority, entrusted with the task of co-ordinating research programmes and disseminating results globally.

21. Marine scientific research in the sea within the national jurisdiction of coastal States should be subject to the prior consent of the coastal State concerned. The rights of the coastal State could be protected by strict observance of its laws and regulations. Those rights could be further protected through: first, effective participation of the coastal State in the research in the manner it chose; secondly, unimpeded transmission of all data, findings and results of the research to the coastal State and non-publication of those results without the prior consent of the coastal State concerned; thirdly, *bona fide* research certification by the flag State; fourthly, assistance to the coastal State in interpreting scientific data and training its nationals; and fifthly, scientific research conducted in such a way as not to harm marine resources or obstruct their exploitation.

22. International co-operation constituted an essential factor in scientific research activities in the seas and oceans.

23. With regard to the transfer of technology to the developing countries, international regulations governing technical

²General Assembly resolution 2626 (XXV).

³General Assembly resolution 3202 (S-VI).

assistance should be formulated and States in a region where marine scientific research was being conducted should participate in that research. The envisaged Authority should co-ordinate all technical assistance programmes and the transfer of technology.

24. Mr. BUSTANI (Brazil) said that the 1958 Geneva Conventions had not dispelled doubts concerning the juridical basis for the conduct of scientific research, which had escaped effective international control except with regard to the continental shelf. On the pretext that the four freedoms of the sea contained in article 2 of the 1958 Geneva Convention on the High Seas⁴ were not exclusive, attempts had been made to carry out unrestricted activities the results of which benefited only a few States. The international community had accepted the concept that the sea-bed and ocean floor beyond the limits of national jurisdiction were the common heritage of mankind. It followed that all research in that zone should be subject to international rules and should benefit mankind as a whole. The equality of all States should be guaranteed by an appropriate International Authority to ensure that the developing countries were not dependent on the developed countries for obtaining the results of scientific research or for training. Results should be globally disseminated and developing countries should be assisted in training personnel in order to ensure their capacity to assimilate such information. It was necessary to draw up rules to govern scientific research in the international zone which would recognize the legitimate rights and interests of mankind as a whole and which would be incorporated in a convention to be prepared at the Conference.

25. His delegation doubted whether it was possible to draw a distinction between pure research and applied research with a view to commercial exploitation. However, even a simple theoretical definition would be useful for the purpose of setting limits and defining the objectives of marine research activities.

26. With regard to scientific research in areas within the jurisdiction of coastal States, it was necessary to protect the rights of coastal States and to avoid any widening of the existing technological gap between the developed and developing countries. In that connexion, he quoted from the working paper on scientific research (A/AC.138/SC.III/L.45) which Brazil and other delegations had submitted to the sea-bed Committee in 1973.

27. The Convention on the Continental Shelf contained similar provisions, and in practice, some States regulated the conduct of scientific research in areas under their jurisdiction in accordance with those provisions, with excellent results for them and for the international scientific community.

28. With regard to the transfer of technology, his delegation felt that contributions from the international organizations or the developed countries were required in order to provide better-trained staff in the developing countries.

29. U TUN MYAT (Burma) said that his delegation fully realized the vital role of scientific research in the development of marine technology and the vast potential benefits that mankind could derive therefrom. However, past experience had shown that marine scientific research was not completely immune to the dictates of politics and big business. It therefore felt that the prior consent of the coastal State was a basic prerequisite to the conduct of scientific research anywhere on the continental shelf or in the exclusive economic zone of a State. The coastal States should participate in such research; data and samples should be shared with the coastal State; results should be published with the consent of the coastal State and it should be given assistance in evaluating research results and compliance with all international standards.

30. The immense potential resources of the sea offered developing States a genuine opportunity to improve their living

standards. However, in order to take advantage of that potential, they needed to acquire the technology to exploit the riches the sea offered. Since the acquisition of that technology involved expenditure which a developing State could not afford, appropriate arrangements should be made for international technical co-operation. His delegation hoped that the conference would arrive at a concrete set of provisions for the effective transfer of such technology.

31. Mr. ESCALLON VILLA (Colombia) said that the aspirations of the under-developed world to provide for the well-being of its peoples were at stake in the current negotiations aimed at promoting scientific research and the transfer of technology without the burdensome cost which had been responsible for further widening the gap between the world of misery and hunger and the world of affluence and waste. The developing countries could no longer accept crumbs from the table of the industrialized countries.

32. The concentration of scientific knowledge in the hands of a few was a cause of anxiety to a number of countries with long coastlines, but with limited means to obtain information concerning their geographical characteristics and actual wealth. Unable to meet the basic needs of their peoples for health, education, work, and housing, the developing countries were even less in a position to dedicate large sums of money to scientific research.

33. With regard to the common heritage of mankind, the Conference had the obligation to protect the interests of future generations in view of existing conditions and reasonably foreseeable possibilities.

34. The developing countries were in need of training programmes conducted by international bodies to enable them to assimilate research findings, while continuing consultations should be held with regard to the training of personnel, methodology, and the use of equipment.

35. The coastal State should have the right to regulate and control scientific research activities in its territorial sea, patrimonial sea or economic zone, and its continental shelf. The coastal State should grant its permission for such activities when they would benefit their peoples and the international community.

36. The coastal State had the right to participate in scientific research for which it had given its approval, in the stages of planning, execution, processing, interpretation, and publication of findings.

37. Scientific research carried out in the area beyond national jurisdiction should conform with the rules to be established by the assembly and council of the International Authority. Since such research would be carried out in the name of mankind and in the area of its common heritage, all men were entitled to scientific knowledge of the zone and to benefit from its resources.

38. The transfer of technology went hand in hand with scientific research when the latter was carried out in good faith and for the benefit of the international community.

39. There was no question of restricting scientific research, but rather of intensifying it in the light of the need of the developing countries to acquire the necessary and basic information to achieve their ideals and objectives.

40. Miss MARIANI (France) said that the definition of scientific research worked out by Sub-Committee III of the sea-bed Committee was valuable in that it maintained the essential distinction between fundamental or "open" research and industrial exploration. Although in the long term fundamental research might have eventual practical applications, it was carried out without any concern for immediate application, with a view to increasing knowledge for the general benefit. Scientific research was therefore a legitimate activity and a right to be enjoyed by all States, whatever their geographical position, and competent international organizations as well. France ap-

⁴United Nations, *Treaty Series*, vol. 450, p. 82.

proved variants A and E of document WG.3/Paper No. 5 prepared for Sub-Committee III, contained in the report of the sea-bed Committee (A/9021 and Corr.1 and 3, vol. I, pp. 103 and 105).

41. The Committee had to pick up where Sub-Committee III had left off and study the conditions governing the exercise of the right to carry out scientific research. Those conditions could differ depending upon the area in which the research was carried out. The right to conduct scientific research should also be coupled with certain obligations which might be described as the ethics of research.

42. It was quite reasonable, therefore, that research in the territorial sea should be subject to the consent of the coastal State. In areas under national jurisdiction, the provisions of the Geneva Convention on the Continental Shelf struck a balance between the interests of the coastal State and those of researchers. They provided a satisfactory point of departure, though they could be improved to take into account the needs and aspirations of States which had not participated in the 1958 Conference on the Law of the Sea. The consent of the coastal State was necessary, but it should not ordinarily be refused when the proposed research met certain conditions. Very often refusals by the coastal State were the result of misunderstanding. For that reason, the Intergovernmental Oceanographic Commission had developed a procedure which facilitated the obtaining of the consent of the coastal State and ensured the latter's participation in the scientific research. Resolution VI-13 of the Commission, concerning the promotion of fundamental scientific research, encouraged co-operation between the State which carried out research and the coastal State by including the latter in all stages of the work. France had immediately put that resolution into practice by adopting a two-step procedure for the submission of requests and the granting of authorizations for scientific research in the territorial waters or on the continental shelf of other States, which consisted of a general request, followed by a detailed request, thus following exactly the guidelines of resolution VI-13.

43. It was necessary to facilitate research in a spirit of co-operation along the lines recommended by the International Council of Scientific Unions in document A/AC.138/SC.III/L.38.

44. Beyond the areas subject to national jurisdiction, research must remain unimpeded as it had always been for the greater good of all mankind, subject of course to respect for the environment and the other legitimate uses of the sea. Such freedom, however, did not preclude co-operation which in most cases proved to be indispensable.

45. The conduct of research imposed certain obligations on scientists which they regarded as perfectly natural, as the resolution of the International Council of Scientific Unions illustrated. In that connexion, the draft articles submitted by the United States delegation (A/AC.138/SC.III/L.44) contained some interesting points.

46. She emphasized the right of the coastal State to ensure the presence of scientific observers on board research vessels and its right to access to the findings. To facilitate access to and exchange of data, appropriate networks should be set up making use of the international, regional, or national data centres, and through the use of standardized formulae such as the ROSCOP inventory (Report of Observations/Samples Collected by Oceanographic Programmes) developed by the Intergovernmental Oceanographic Commission.

47. The question of the transfer of technology had to be viewed in a different light according to the level of development of the countries involved. The transfer of technology was first of all a problem of education and training. The specialized agencies and other bodies of the United Nations such as UNESCO, FAO and the United Nations Conference on Trade and Development (UNCTAD) had a role to play, each within

the realm of its own competence. Thus training and educational programmes were one of the ways to carry out the transfer of technology, but they raised the question of the need for an adequate infrastructure. It was, therefore, necessary to promote the establishment of regional centres or multidisciplinary institutions to meet the needs of the countries involved, (with due regard to studies of local species and ecology). Scientific and technical personnel had to be trained in the processing and interpretation of data. Training courses for personnel from developing countries were given in various data centres, and one was planned for the centre in Brest when sufficient personnel would be available.

48. The transfer of technology was only part of an over-all programme of scientific development, and the modalities for the transfer of technology had to be determined within the context of a global strategy. Finally, as in the case of the protection of the marine environment, the Conference should confine itself to drawing up, in the form of treaty articles for inclusion in a general convention, a set of principles establishing broad guidelines for the transfer of technology, leaving to specialized bodies, which had at their disposal adequate technical facilities, the task of working out the modalities of the transfer.

49. Mr. BOOH (United Republic of Cameroon) said that the examination of the two questions of scientific research and the transfer of technology was a test of the sincerity of the declarations of good faith which had been made by all delegations. The question was whether marine research would promote genuine human solidarity and development of all peoples, or whether it would serve the desire for domination and the selfish interests of a minority of technically advanced Powers.

50. Certain delegations were trying to hedge the question by asserting dogmatically what they called the freedom of scientific research. If that freedom were not subject to any conditions, it would certainly complicate the matter of marine research. No one questioned the need to gather the maximum amount of information on the oceans and their resources. The Conference's task was to take adequate steps so that such research would not be diverted from peaceful and human purposes to serve the exclusive interests of the industrialized States. Such basic preoccupations of the developing countries in the matter of scientific research should not be ignored.

51. The representative of the United Republic of Cameroon then referred to the provisions of relevant documents and declarations such as General Assembly resolution 2560 (XXIV), the Lima Declaration of 8 August 1970,⁵ the Addis Ababa Declaration of the Organization of African Unity of 1973 and the 1958 Geneva Convention on the Continental Shelf, all of which mentioned in one way or another the rights of the coastal State to approve or reject the conduct of scientific research in areas under its national jurisdiction. The future convention on the law of the sea should expressly embody the principle that all scientific research carried out in the area subject to the sovereignty and jurisdiction of a State should be subject to prior authorization of that State, which would also have the right to participate in that research and ensure for itself an equal share of the knowledge thus acquired. With regard to the area beyond national jurisdiction, scientific research should be carried out for exclusively peaceful purposes in conformity with the provisions of General Assembly resolution 2749 (XXV), and should be subject to an appropriate form of international regulation so that all mankind would receive the greatest possible benefit from it.

52. The question of the transfer of technology to the developing countries was closely linked with scientific research and should be included in a global strategy of development for the poor countries. The experience acquired in this regard by the international community within the framework of the imple-

⁵Document A/AC.138/28 of 14 August 1970.

mentation of the International Development Strategy for the Second United Nations Development Decade could help to avoid certain mistakes of the past.

53. Developing countries had often spent large sums of money to import technology from developed countries which was in some cases already outmoded, with serious repercussions for their foreign trade and balance-of-payments. Taking a laissez-faire approach to transfer of technology would aggravate certain aspects of under-development instead of eliminating them, and would make the developing countries more dependent on other countries. If such a dependence were to prevail in the realm of the seas, it would rob of all meaning the principles proclaimed by the General Assembly of the United Nations in resolution 2749 (XXV).

54. In view of the magnitude of the transfer of technology to be carried out, serious attention should be paid to resolution 39 (III) adopted by the third session of UNCTAD in 1972, calling upon the developed countries to devote .05 per cent of their gross national product each year towards the solution of the technical problems of the developing countries, and at least 10 per cent of their expenditures for research and development toward programmes aimed at finding solutions to the specific problems of the developing countries.

55. The foregoing measures would help to improve substantially the situation of the developing countries if they were the object of an efficient multilateral approach and if they were backed up by a real willingness on the part of the developing countries to co-operate on a regional or subregional level.

56. Mr. JACOBSEN (Denmark) said that his delegation would like to see articles on scientific marine research incorporated into a future convention on the law of the sea and not in a separate convention. They should aim at hindering research as little as possible, and at promoting the closest international co-operation. To facilitate the conduct of marine research, coastal States should simplify the procedure of acceptance and for the entry of research vessels into their ports.

57. All States and international organizations should have the widest acceptable rights of conducting marine scientific research freely, with due regard for the legitimate uses of the sea and the general principles of international law.

58. Within the territorial sea and on the continental shelf subject to national jurisdiction, research could only be carried out with the consent of the coastal State in accordance with the existing rules contained in article 5 of the 1958 Convention on the Continental Shelf. As long as the proposed research was based upon internationally agreed scientific principles, such consent should not normally be denied. The request for the intended research programme should include a general description of objectives, methods, time schedule and location of the intended activities and be submitted within a period to be determined by international agreement. Scientific representatives nominated by the coastal State should have the opportunity to participate in the planning and conduct of the investigations and all results should be shared with the coastal State by providing copies of all data obtained during the research activity. Prompt publication of the obtained data through internationally accepted scientific media would confirm the good faith with which the research activities were carried out.

59. Marine scientific research should be conducted in strict accordance with the principles concerning the preservation of

the marine environment and in accordance with existing international or regional conventions.

60. Scientific research in areas outside national jurisdiction should be open, as mentioned in the paper submitted by the International Council of Scientific Unions (A/AC.138/SC.III/L.38), in view of the fact that any regulations or restrictions on the conduct of such research would inhibit the advancement of scientific understanding and be detrimental to the future welfare of people of all countries. With regard to the transfer of technology to the developing countries, Denmark operated through the various agencies of the United Nations by arranging specialized training courses, a number of which had taken place in Denmark in recent years.

61. Mr. SANDERS (Guyana) shared the view that scientific research was necessary and desirable. Some delegations advocated freedom of scientific research to improve knowledge of the marine environment while others advocated regulations because they regarded scientific research as the first step towards exploitation of the resources of the marine environment by those capable of conducting research. Many developing countries lacked the adequate expertise to conduct or participate meaningfully in such research or to evaluate the results. Some of them feared, with good reason, the possibility of espionage and other subversive activities which might be carried out under the guise of, or alongside, scientific research for genuinely peaceful purposes.

62. His delegation believed that it was necessary to provide appropriate rules to govern the conduct of such research. It supported the view that coastal States should exercise sovereign rights for the purpose of controlling scientific research and exploring the natural resources of the sea-bed, subsoil and superjacent waters in the area of national jurisdiction, including the economic zones. Scientific research in that area should be carried out only with the express consent of the coastal State, but such consent should not be unreasonably withheld. The coastal State should have a duty to promote scientific research. Furthermore, information obtained as a result of such research should be the property of the coastal State and its publication should be controlled by that State. The coastal State should have the right to participate in the research and the possibility of governmental, bilateral and regional arrangements for specific research programmes should not be ruled out.

63. With regard to the international area, his delegation agreed on the need to promote scientific research in that area and to ensure that the results obtained were made available to all States. An International Authority should be established as the sole representative of mankind in the research and exploitation of the international area. It should be empowered to undertake scientific research either on its own or through third parties, in a way and under conditions to be established by common agreement which would ensure its direct and effective control at all times over such research. With regard to the development and transfer of technology, his delegation felt that suitable programmes should be worked out within the framework of existing international agencies and the International Authority, with the continued invaluable co-operation of the developed industrialized States, to ensure that the developing countries were afforded every opportunity for intensifying their efforts in training personnel in all aspects of marine science and technology.

The meeting rose at 5.30 p.m.

8th meeting

Friday, 19 July 1974, at 10.55 a.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Scientific research (*continued*)

[Agenda item 13]

Development and transfer of technology (*continued*)

[Agenda item 14]

1. Mr. EHRMAN (Panama) said that since there was no lack of exchange of scientific information among the developing countries or any transfer of such information from the developed to the developing countries, there was no unity of view concerning the problems of scientific research. Better means of scientific communication would have to be established, so that marine information would be accessible to all countries.

2. His Government recognized the need for unrestricted marine scientific research, but it would have to be regulated, to avoid the risk of abuse. For that reason it maintained the sovereign right to regulate such activities in its territorial waters.

3. It was difficult to separate scientific research from the question of marine pollution and protection of the marine environment, because it was scientific research which would show the way to combat pollution and protect the seas.

4. There were two divergent approaches to the question, neither of which his delegation could accept as a solution. The first was that pollution was an invention of the developed countries to gain economic control of the developing countries and that drastic controls were necessary; but excessive restrictive measures resulting from improper interpretation of scientific experiment would cut down the development of the developing countries. The second approach favoured development at all costs; and the consequences of development without scientific planning would be disastrous, because the very basis of development would be destroyed by pollution and inadequate use of resources. Panama had known two such examples, connected with the building of the Panama Canal, the first resulting in the disappearance of several species of fish and the second in the transformation of the Barraza, Santo Domingo and Bella Vista beaches into a noisome bay whose foul-smelling air reached the urban sectors along the Bay of Panama.

5. Development must be carried out with the scientific co-operation of all countries, sharing and learning from experience and mistakes.

6. Mr. STEVENSON (United States of America) said his delegation believed that the coastal State should have the right to authorize and regulate scientific research in the territorial sea but that the existing right to conduct research in the area beyond the limits of national jurisdiction, as provided in the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction¹ of 1970, should continue.

7. If a zone was established at a distance of 200 miles from the coast, it would include at least one third of the ocean, of particular importance to scientists. The two fundamental marine science questions before the Conference were: first, to determine whether to promote marine science; and secondly, to decide how to accommodate other interests in the conduct of marine science. He believed that there was a consensus in favour of encouraging marine scientific research and that the

rules regarding it should ensure the greatest benefit to all and protect coastal State interests in the economic zone. The régime to be created must reflect that consensus.

8. Marine research was often difficult, time-consuming and expensive, and therefore beyond the limited resources of many developing countries. The only way to ensure that research conducted by countries willing to use some of their resources for that purpose was of benefit to all countries, including the developing countries, would be to create a régime which would guarantee that research was conducted for the universal benefit.

9. A consent régime would not foster scientific research, but would tend to preclude it or undermine its scientific validity. Oceanic processes did not respect man-made boundaries; and while useful research could often be conducted on the long coastlines of his country and its neighbours in the Western Hemisphere without the consent of all the coastal States concerned, that would not be true, for example, in the Gulf of Guinea if only some of the States gave consent.

10. To ensure that all States benefited from marine scientific research, it was important to avoid restrictions on the wide dissemination of findings. Scientific knowledge must flow not only to the coastal and researching States but to all mankind.

11. Ideally, a more complete understanding of oceanic processes would occur if marine scientists were free to carry out research anywhere in the seas without restriction; but the legitimate rights and interests of coastal States must be accommodated. To that end, his delegation had prepared in 1973 a draft treaty proposal (A/AC.138/SC.III/L.44) containing a list of coastal rights embodied in the following obligations for anyone wishing to conduct research in the zone: advance notification and a detailed description of the proposed research; the coastal State to have the right to participate directly or through an international organization of its choice; sharing of all data and samples with the coastal State; assistance to the coastal State in interpreting the results of the research; early publication of the significant results in an open, readily available scientific publication; compliance with all applicable international environmental standards; and flag-State certification that the research would be conducted in accordance with the treaty by a qualified institution and would be purely scientific. That list was an effort to meet the legitimate concerns of coastal States and was based on a study of the national laws of other States.

12. He said that participation would allow the coastal State to satisfy itself that the research was in fact scientific; that open publication would provide additional assurance that the research was not commercially oriented, since collectors of proprietary data were rarely willing to share it with competitors; that compliance with international environmental standards would ensure protection of the environment of the economic zone; that coastal States should have the right to authorize and regulate scientific drilling which was an environmental threat; and that respect for the rights and interests of the coastal State would prevent unreasonable interference with fishing or seabed exploitation.

13. If a researcher met the obligations listed, he should be able to conduct research without coastal State consent. There should, however, be a mechanism for compulsory settlement of disputes concerning research activities available to both the coastal and researching State. He would welcome views on ways of balancing the interests of both sides.

¹General Assembly resolution 2749 (XXV).

14. He believed that the draft articles provided a balance between rights and duties which protected the coastal States' interests while fostering the conduct of marine scientific research and ensuring that it would benefit everyone.

15. With regard to the transfer of technology, he did not support the suggestion made by some representatives that it should be made dependent on coastal State right of consent or that consent would be a useful bargaining lever for obtaining technology transfer. To be effective, technology transfer must be regular and sustained and not the result of negotiations with the occasional research vessel seeking permission. A consent régime would increase research costs and thus reduce the amount of research and the attendant technology transfer; and neither scientific objectives nor the developing countries' objectives would be served if cost became a major factor in determining where research should take place. Transfer of marine science technology would best be accomplished through multi-lateral effort, not through *ad hoc* bargaining for consent to do research.

16. He recalled his delegation's statement in 1972 to Sub-Committee III of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, expressing its willingness in principle to commit funds to support multilateral efforts in all appropriate international agencies, with a view to creating and enlarging the ability of developing States to interpret and use scientific data for their economic benefit and other purposes; to augment their expertise in the field of marine science research; and to have available scientific research equipment, including the capacity to maintain and use it. Such funds would be in addition to financial efforts by the International Sea-Bed Authority. He now wished to re-emphasize his country's willingness to participate in such programmes.

17. Mr. VARGAS (Mexico) said that his country had a sea coast about 10,000 kilometres long—the second longest in Latin America—a continental shelf of about 400,000 square kilometres and about 15 million hectares of coastal lakes and estuaries. Its coastal waters on the Pacific Ocean, the Gulfs of Mexico and California, and the Caribbean Sea were rich in fish. In order to ensure the full use of the sea, the rational development and exploitation of its resources and the gathering of data on the marine environment, it was essential to conduct scientific research on the sea and its resources, both renewable and non-renewable. His delegation considered, however, that such research should not be regarded as an unrestricted activity. Along with many developing countries, Mexico believed that it should be subject to a measure of control and regulation both in national maritime areas and in the international area of the sea-bed. Unrestricted freedom of scientific research was no longer acceptable.

18. His delegation's views on marine scientific research had already been stated at the 28th meeting of Sub-Committee III of the sea-bed Committee but he wished to supplement its basic points. The distinction between pure and applied scientific research was artificial and basic and applied research were simply stages in the same process. Any State, regardless of its geographic position, or any international organization, could conduct scientific research in the sea, as long as it respected the rights of the coastal States and took into account the interests of the international community, in particular the interests and needs of the developing countries. His delegation also agreed with the delegations which had proposed that scientific research in the marine environment should be subject to a set of basic principles providing, among other things, that such research should be conducted in a reasonable way and without unjustified interference with other uses of the sea; that it should conform with the relevant laws and regulations of the coastal State in areas subject to the sovereignty and jurisdiction of the State concerned; that it should not cause pollution or harm to marine species; that it should not be the basis for any legal

claim on any part of the sea or its resources; and that it should take into account the degree of social and economic development and the national priorities of the coastal State.

19. The coastal State should have the right to participate or be represented in all stages of the scientific research, from planning up to the final stage of evaluating results when such research was conducted in the maritime areas within the sovereignty and jurisdiction of the coastal State.

20. No scientific research should take place in the territorial sea, the patrimonial sea or the continental shelf without the coastal State's prior authorization. However, the coastal State should not withhold its authorization unreasonably if the established requirements had been fulfilled.

21. It was the sovereign right of the coastal State to establish reasonable conditions for authorizing scientific research in any of those maritime areas by individuals or foreign institutions, such conditions to take account of the purposes of the research, including its economic implications, the type, means and site of research, the name, captain, tonnage, type and class of ship and its ship-borne scientific facilities; the names of the scientists taking part, the name of the person in charge of the project, and the name of the sponsoring institute; the proposed timetable and other relevant information.

22. Such information should be given to the coastal State within six months of the date proposed for starting research; the coastal State would be allowed a period not exceeding three months to reply to a properly submitted request, but the period could be reduced if a scientist or representative of the coastal State participated in the planning and preparatory work or in the implementation and evaluation of results.

23. By authorizing scientific research in the maritime areas under its sovereignty or jurisdiction a coastal State should acquire the following rights: to participate or be represented in all phases of such research, to make appropriate use of and share in the samples obtained, to have access to all information and the results obtained from it, to require publication of the results, to obtain adequate technical assistance to understand fully the information resulting from the research, particularly in its scientific and economic aspects, and the right to control and supervise the research.

24. The coastal State would grant appropriate facilities for the conduct of the research it had authorized; and it would be desirable for the State to co-operate in subregional, regional and multinational research when such research was conducted in accordance with the relevant principles and rules.

25. He stressed the importance of satellites in scientific research, particularly in connexion with marine and land resources. In the exploitation of fisheries, weather forecasting and pollution, for example, satellites were already an important factor which in some cases could be detrimental to the States which lacked technological means. Satellites could also on occasion be used instead of oceanographic vessels for marine scientific research in order to evade the requirements laid down by the coastal State concerning the marine area under its sovereignty or jurisdiction. Careful study must be given to the kind of regulation and control required for satellites used for marine scientific research which affected the natural resources, renewable and non-renewable, over which a coastal State exercised full sovereignty.

26. Mr. HARAN (Israel) said his country had few natural resources and would derive no substantial advantage from extending its jurisdiction over marine resources, but would be adversely affected by the extension of such jurisdiction by other States. On the other hand, it was favourably positioned for marine research and would spare no efforts to develop and encourage its potential in that field. Consequently, his Government had established an oceanographic and limnological research organization whose main research facility, the Israel Oceanographic Institute, was in Haifa. Both the Institute and

its extension, the Elat Marine Biological Laboratory, had small research vessels which were working in the Mediterranean and the Red Sea.

27. Freedom of research was one of the imperatives of modern society and had been of the greatest benefit to mankind. Scientific research, which must not and, in fact, could not be kept a secret, clearly offered the greatest promise to the developing countries in coping with some of the problems facing them. One of the conditions for assuring the developing countries access to scientific knowledge was that they must help to maintain the freedom of research and encourage others to do likewise. Freedom of research was particularly necessary for marine research. The preservation and improvement of the marine environment and the rational and effective use of its resources required the deep understanding and fullness of knowledge that only unhampered oceanographic and marine research could provide.

28. Freedom to carry out scientific research was one of the universally recognized freedoms of the high seas, subject only to the need to protect the marine environment. In the territorial sea, coastal States had rights and interests which had long been recognized by all, including the right to allow or prohibit scientific research. In view of the widening of the territorial sea in many parts of the globe, it would help marine research if a formula could be found that would stipulate that permission to conduct such research would be refused only for very serious reasons.

29. The proposed economic zone would be of enormous size, covering nearly one fifth of the world oceans. Most marine research was carried out in an area only a few hundred kilometres from the coast and would be jeopardized unless a liberal régime was provided for marine research. That could be done by drawing up a list of the obligations of those carrying out research in the area, rather than by enforcing a consent régime like that applied to the territorial sea. The obligations could include, *inter alia*, flag State certification that research was being conducted by a qualified institution, publication of research results and compliance with applicable international environmental standards. The issue was of decisive importance and might well determine the whole future of marine research.

30. The proposed convention on the law of the sea would make only a small contribution to the transfer of technology to the developing countries. The convention should contain provisions relating to the transfer of technology, but they should be seen only as a stepping stone for further efforts. The principal efforts must be made in the international organizations possessing the necessary expertise.

31. Mr. FINUCANE (Ireland) said that his country, which had a long coastline and a large continental shelf area, was particularly interested in marine research and transfer of technology. Marine research was fundamental to the efficient understanding, management and orderly development of marine resources.

32. Much marine research was fundamental and did not lead directly to economic exploitation. Its pursuance was a legitimate objective in itself; an increased understanding of the oceans should be encouraged and expanded as far as possible. The difference between pure and applied research was increasingly difficult to define and was subject to change as a result of technological development. Consequently, any country wishing to carry out marine research within the territorial sea or economic zone of a coastal State should obtain the State's consent beforehand. In order not to interfere with the conduct of scientific research, consent should not be arbitrarily refused or delayed unreasonably.

33. Marine research should be conducted with maximum efficiency and rationalization, and with maximum regard for the safety of personnel and equipment. Programmes should be designed to contribute as far as possible to the growth of scien-

tific knowledge, while interfering as little as possible with marine ecology. Accordingly, a coastal State should be able to make regulations for the conduct of marine research in its area of coastal State jurisdiction. Marine research had economic, social and political implications and the interests of coastal States in the economic zone could best be protected by the coastal State itself by the application of a reasonable consent régime.

34. On the high seas, marine research should be carried out freely, within the jurisdiction of the International Sea-Bed Authority, and subject only to achieving the most efficient and rational development of marine science programmes. Countries or institutions wishing to carry out marine research in the area should notify the Authority in sufficient time for it to consider the programmes in relation to others. The Authority should draw the attention of countries proposing programmes to similar ones being carried out by other countries and should promote joint programmes as far as possible. The Authority should also promote and encourage the carrying out of marine research in such a way as to lead to the orderly and equitable exploration and exploitation of international ocean space. In some instances, the economic zone might be arbitrary in terms of the physical characteristics of the adjacent ocean; certain coastal States might accordingly have a legitimate interest in programmes being carried out adjacent to that economic zone. The Authority should therefore notify coastal States of programmes in areas adjacent to their economic zone and should promote their participation in those programmes.

35. The results of all marine research should be disseminated in such a way as to increase as far as possible international scientific understanding of the oceans. They should therefore be disseminated as widely, fully and quickly as possible.

36. His delegation attached the highest importance to the subject of technology transfer. As a country with limited resources, Ireland fully understood the position of representatives from developing countries who had spoken on the urgency of establishing suitable mechanisms for the transfer of relevant and meaningful technology.

37. Mr. RODRIGUEZ (Venezuela) said that the regulation of scientific research was an important aspect of the concept of the patrimonial sea. Research could affect the exploitation of the resources of the exclusive economic zone, and must therefore be defined clearly so as to protect and ensure the continuity of *bona fide* research in the future. Research must be distinguished from industrial exploration and from commercial and military activities. *Bona fide* research should be subject to the previous consent of coastal States. Scientific progress must not be held up.

38. His delegation believed that a new era of research was beginning. Unilateral research by the developed countries could give way to bilateral agreements to promote research. International machinery could be established, perhaps with the participation of the International Sea-Bed Authority, to serve as a clearing-house for projects put up by various countries and to facilitate the formalities for research in the exclusive economic zone.

39. Technological progress had a direct effect on productivity and was therefore a fundamental factor of under-development. It was in the interest of the whole international community to seek ways of narrowing the technology gap by facilitating the transfer of technology from the developed countries to the developing countries. The new sea-law package deal should therefore include general, clear and exact provisions concerning the transfer of technology. First, the priorities set by receiving countries must be taken into account, without narrowing their options. The technology should not be limited to anti-pollution and marine environment protection, but should cover a wide range of subjects of importance to marine science. Secondly, the technical and scientific structure of the devel-

oping countries must be taken into account, as must the need to reinforce the structure by training national technical personnel. He reiterated his delegation's concern over the general rise in training costs in major international education institutions. Thirdly, the organizations and bodies of the United Nations that encouraged the international transfer of technology must be given greater support. Fourthly, the developed countries must take action at home to provide the developing countries with access to all sources of technology without any discrimination. Fifthly, the direct and indirect costs of the transfer of technology could be very high and his delegation did not wish to see the economically weaker coastal States barred from a more intensive and rational exploitation of the sea by economic and financial difficulties in acquiring advanced technology. What was involved was not international assistance, but justice between peoples.

40. Mr. LO Yu-ju (China) said the contention of many countries of the third world that marine scientific research should be appropriately regulated was entirely proper and should be taken as the basis for discussion at the Conference. The super-Powers, however, in disregard of the just demands of the majority of States, strongly opposed the regulation by coastal States of scientific research in sea areas under national jurisdiction. Marine research, like any other scientific research, directly or indirectly served definite political, economic or military purposes. If such scientific research was permitted freely, the coastal States would be unable to safeguard their sovereignty and protect their national security. In the hands of the super-Powers, marine research was a means of contending for maritime hegemony and for pursuing policies of aggression and plunder. The so-called "freedom of scientific research" advocated by them was only the freedom to violate the sovereignty of other States and to monopolize marine research. To counter that, it was entirely necessary that many countries, particularly those of the third world, should insist on the appropriate regulation of marine research. His delegation fully supported their stand.

41. Marine research should be governed by the following basic principles. First, anyone wishing to conduct marine research in the sea area within the national jurisdiction of another coastal State must obtain the prior consent of that State and observe its relevant laws and regulations. Secondly, a coastal State had the right to take part in any scientific research carried out by other countries in the sea area under its national jurisdiction and to obtain the data and results thereof. Such data and results could not be published or transferred without the prior consent of the coastal State concerned. Thirdly, marine research in the international sea area beyond national jurisdiction should be subject to regulation by the international régime and international machinery to be established. Fourthly, all States should promote international co-operation in marine research and actively assist the developing countries to enhance their capability to conduct marine research independently, on the basis of mutual respect for sovereignty and equality and mutual benefit.

42. The developing countries had great potential for developing their marine science and technology independently. That could be done by unremitting effort in the light of a country's own specific characteristics and conditions and by advancing along the road of independence and self-reliance. Self-reliance did not mean self-seclusion or the rejection of foreign aid. All countries should exchange marine environment preservation and marine research techniques. His country wished to learn from the useful experience of other countries in that respect. There should be an active transfer of technology to developing countries, without any conditions or demands for special privileges. The technology transferred must be practical, efficient, economic and convenient to use. Experts and other personnel dispatched to the recipient countries should conscientiously pass on technical know-how to the peoples of those countries

whose laws and national customs should be respected. They must not ask for special facilities or engage in illegal activities.

43. The question of marine research and the transfer of technology could be reasonably resolved only on the basis of respect for national sovereignty and the equality of all countries. His delegation's basic stand was that the sovereignty of all States should be safeguarded and their national economic interests defended, and super-Power hegemonism should be opposed.

44. Mr. STRÖMBERG (Sweden) said that the effective conduct of ocean research was dependent on ease of access and flexibility of movement. The sealing of large areas of the ocean by imposing strict rules on the conduct of scientific research would delay and might even obstruct a final understanding of many of the natural processes of the oceans, of which only the most gross features were generally known. The distribution of resources and of man's activities and their effects on the environment made research necessary in waters and on the sea-bed rather close to the continents. Marine pollution was a case in point. Any rules would have to be temporary and subject to modification as knowledge increased. It was for the very reasons he had outlined that Swedish scientists had strongly supported the views expressed by the International Council of Scientific Unions (ICSU) and its Scientific Committee on Oceanic Research at the 38th meeting of Sub-Committee III of the sea-bed Committee.

45. His delegation in principle favoured maximum freedom of scientific research; marine research should not form the legal basis for any claim to any part of the marine environment or its resources. It was important to distinguish between exploration leading to exploitation, which should be regulated by the International Authority when carried out beyond territorial waters and economic zones, and open scientific research which should be interfered with as little as possible. There was little reason to change existing regulations governing scientific research within territorial waters. The coastal State should have sovereign rights to the area but should co-operate as far as possible with other nations in studying marine science within the area.

46. His delegation was aware that the concept of an economic zone would raise problems for scientific research. Because of the economic importance of possible resources, a coastal State must have the right to participate in oceanographic research in the economic zone and should have the right to be informed of all the results of the investigation. The results should be printed and disseminated; the resources of the area should not be harmed. Existing regulations for the continental shelf concerning geological aspects were satisfactory, but would require reconsideration should the economic zone extend beyond the shelf.

47. Less strict regulations should apply to investigation of the water mass above the sea-bed and to studies of the benthic fauna and of the interaction between the sediment and the water. The coastal States should be notified well in advance of any intention to carry out a research project into any of those matters within their economic zones.

48. Scientific research in areas beyond the economic zones should be stimulated. The International Authority must, however, be notified in advance. That would have the advantage of informing the scientific and international community about projects, thereby facilitating international co-operation and reducing the risk of duplication. International knowledge of research projects would reduce the risk of any research contrary to the general principles of the future convention. Such research would require the formal consent of the Authority, which could also have the right to have observers participating in the projects. His delegation was therefore in favour of suggestions that would stimulate marine research for the benefit of mankind and the publishing and the dissemination of results through international channels.

49. It was also in favour of increased support to the developing countries to help them to increase their capabilities and to make use of the results of the research. The transfer of technology was imperative for that purpose, as was assistance to take advantage of scientific results produced elsewhere.

50. Mr. KNOKE (Federal Republic of Germany) said that, in his delegation's opinion, there was a close substantive link between marine scientific research and the transfer of marine technology. That was because in recent years marine scientific research had grown increasingly dependent on the use of the most up-to-date equipment and processes, while the application, development and transfer of marine technology called for increasingly precise information on the sea and the marine environment. In view of that link, solutions to the problem involved could best be reached if both items were discussed together.

51. The discussions in the Third Committee should be confined to fundamental research for peaceful purposes and should not extend to commercial prospecting, exploration and exploitation. Fundamental research for peaceful purposes must be conducted with as few restrictions as possible. In order to benefit all States and all interested international organizations, including the future Sea-Bed Authority, there should be as much international co-operation, participation of foreign scientists and publication of research results as possible.

52. In the territorial sea, scientific research should be subject to the express consent of the coastal State. In the adjacent areas beyond the territorial sea, where the coastal State might be expected to enjoy special rights on the basis of existing or future conventions, scientific research must be conducted in close co-operation with the coastal State, but should not be subject to complicated bureaucratic procedures. The nationals of coastal States must be given the opportunity to participate in the planning of research projects and the evaluation of results, as well as in research expeditions.

53. In the remaining area of the high seas, the sea-bed and the ocean floor, there should be free research for the benefit of all States and interested international organizations.

54. In all areas of the sea, marine scientific research should be conducted with due regard to other uses of the sea and with strict and adequate safeguards for the protection of the marine environment.

55. His Government accorded high priority to international co-operation in the field of scientific research, and a large number of scientists and research vessels from his country were already taking part in international research projects. However, co-operation should be further intensified and expanded with a view to strengthening the capacity of all States to conduct research themselves.

56. Special emphasis should be given to international co-operation in the development and transfer of marine technology. Problems relating to investment, the participation of companies and the protection of technical know-how could, he believed, be overcome through joint efforts. The basis for such efforts should be, as far as the developed countries were concerned, a more exact knowledge of the scientific and technical needs of the developing countries and, as far as the developing countries were concerned, a better appreciation of the needs of companies of scientifically advanced countries engaged in the development of marine technology and the production of scientific and technical equipment. The following list of measures, although not comprehensive, deserved consideration and might perhaps serve as a basis for the Committee's discussions on ways of promoting the transfer of marine technology: intensive education and training of experts from developing countries at institutions and establishments of developed countries and at regional training centres in developing countries; dispatch of technical experts to developing countries; development of rational technical processes and durable technical

equipment, adapted to the special needs of the developing countries; provision of technical equipment together with the knowledge and capability to operate and maintain it; and promotion of joint ventures by both developed and developing countries for the development and application of marine technology in developing countries.

57. His delegation believed that the more general discussions on the transfer of technology which had taken place within the framework of the Economic and Social Council, the United Nations Conference on Trade and Development, the United Nations Industrial Development Organization and the United Nations Institute for Training and Research would be of interest to the Committee. It therefore requested the Secretariat to prepare a paper on the subject, outlining the action taken and the results achieved. The Committee should also draw on the experience of international organizations, particularly the International Atomic Energy Agency, in the field of technical assistance.

58. Mr. DE LAS CASAS BRIEVE (Peru) said that his country's position concerning scientific research within the zone subject to the jurisdiction of the coastal State had been set forth in document A/AC.138/SC.III/L.45 and was the fruit of 27 years' experience.

59. Peru belonged to the school of thought which favoured dividing the ocean into two areas for the purposes of conducting scientific research: an area of 200 miles where the coastal State would have the right to regulate all activities; and an international area where scientific research would be subject to international regulations. In the first area, any scientific research undertaken must comply strictly with the regulations of the coastal State and be authorized by it. The following information should be communicated to the coastal State by those wishing to conduct the research: the objectives and tasks of their research; the means to be used; the scientific staff to be employed; the zones in which the activities were to be conducted; and the dates proposed and an undertaking to transmit to the coastal State the primary data and results of investigation and any samples obtained. Research activities under those conditions had been carried out in the area under Peru's jurisdiction by, *inter alia*, the United States, the Soviet Union and Japan. Peruvian scientists had participated in all the research activities, and Peru's consent had been sought for any changes made in the conditions laid down in the relevant authorization. The results of the research should be made available by the participating countries through publication in readily available scientific magazines. His delegation believed that the concept of a 200-mile area over which the coastal State would exercise its jurisdiction could perfectly well be reconciled with such other concepts as the national sea, the economic zone or the patrimonial sea.

60. Peru had also gained valuable experience in the development of technology, as a result of which its fishing industry had made rapid strides. It had taken existing technology, adapted it to its own special circumstances, and succeeded in creating an authentic technology of its own. In addition, as a result of joint research agreements with other countries and with the United Nations Development Programme, three highly efficient fisheries research institutes had been established on the western coast of South America. In every instance, Peru had found the crucial step to be the passage from mere utilization to the actual elaboration of technical knowledge.

61. His delegation advocated the expansion of regional research programmes in which the personnel of regional or sub-regional institutes worked together with high-level experts from international organizations or the more advanced countries to solve common scientific and technological problems.

62. In conclusion, he suggested that the representative of UNCTAD should be invited to speak about the transfer of technology.

63. Mr. FARINHA DA CONCEICAO (Portugal) observed that the distinction made by some scientists between fundamental and applied research was not accepted by everyone since fundamental research, although not directed at a specific goal, sometimes generated knowledge which had a practical application. Consequently, his delegation preferred not to make a rigid distinction between the two. For that reason, it was of the view that the exclusion of industrial exploration and other activities aimed at the direct exploitation of marine resources from the definition of marine scientific research in WG.3/Paper No. 4 prepared for Sub-Committee III of the seabed Committee (see A/9021 and Corr.1 and 3, vol. I, p. 103) would have been regarded only as a limitation on the related activities referred to therein. It should be recognized that scientific knowledge of the marine environment resulting from research could be used in activities in some way linked to the exploitation of the resources of the sea, provided that the relevant regulations were complied with.

64. Turning to Working Paper No. 5 prepared by the same Working Group (*ibid.*), he suggested that the subject of the conduct and promotion of marine scientific research required further study by the Group.

65. As far as research in the jurisdictional zones of the coastal State was concerned, his delegation was prepared to support a co-operative arrangement under which the coastal State could authorize the conduct of scientific research in exchange for being allowed to participate in the activities and being informed without delay of the results.

66. Although all States attached the greatest importance to marine scientific research, many lacked the means to conduct it. Moreover, research work, to be fully beneficial to all mankind, should be conducted in all parts of the marine environment. Consequently, his delegation felt that there should be co-operative programmes in which scientific research was carried out jointly by States and the competent specialized agencies.

67. The co-operative effort should be so organized as to promote: the training of experts from the developing countries; the delivery of equipment and exchange of scientific data and samples; the participation by developing States in the work carried out on board research ships and in laboratories and data-processing centres; and where possible, the participation of scientists from the coastal State in the design of the research programme.

68. Mr. NTAMILA (United Republic of Tanzania) observed that although science and technology had served the noble goal of liberating man both intellectually and physically from degrading social and environmental régimes, they had also been made to serve colonial and imperialistic interests by enhancing the economic, political and military aggrandizement of some nations. His delegation sincerely hoped that the Conference would not facilitate the selfish exploitation of the oceans by such nations.

69. Certain of the statements made by representatives of the technologically advanced States gave the distinct impression that developing countries were apathetic about conducting scientific research. Such an impression was certainly not borne out by the proceedings of the many regional conferences for the application of science and technology sponsored by the United Nations Educational, Scientific and Cultural Organization (UNESCO), nor by the existence of a scientific and technical commission within the Organization of African Unity. Moreover, many developing countries had apportioned a considerable percentage of their limited financial resources for the purpose of establishing national infrastructures for the promo-

tion of science and technology. Indeed, in view of the problems facing developing countries in many areas of human life and endeavour, it was tempting to assert that the need for scientific and technological research and the transfer of technology was greater for the third world than for the technologically advanced States.

70. Marine scientific and technological research was a prerequisite for the efficient management of both the living and non-living resources of the ocean. With regard to fish, there was a need to obtain accurate information on reproductive cycles, food relationships, ocean current movements, population dynamics, light intensity and temperature variations, salinity changes, plankton concentrations, species distribution, growth rates, and so forth. With regard to marine flora, it had been recognized that algal species held a vast potentiality as human food, animal feed, manure, sources of drugs and other industrially important products. As far as non-living resources were concerned, sound policies must be evolved to guide exploitation of the mineral-bearing nodules on the sea-bed and exploitation for petroleum under the continental shelf.

71. All nations needed safe shipping routes in order to conduct their international trade, as well as the assurance that their security and sovereignty would not be threatened by the transportation of military personnel and equipment from one part of the world to another. With regard to marine pollution, steps must be taken to preserve the balance of the marine system and hence the quality of life for future generations of mankind.

72. In view of the above, his delegation had reached the following conclusions. First, scientific and technological research must be conducted in order to be able to carry out effectively the complex task of managing and exploiting the natural resources of the oceans. Since such research was an urgent necessity, there was little point in drawing a distinction between applied and fundamental research. Secondly, research was a prerequisite for national and world survival. Thirdly, research must be conducted for the understanding of marine systems without which there could be no viable resource management and exploitation policy. Fourthly, successful research programmes required the co-operation of States, the organizations of the United Nations family, and non-governmental organizations at the regional and international levels. Fifthly, co-operative research programmes, particularly those in which advantaged and disadvantaged States participated, would be viable only if they were conducted on a basis of equality. That implied prior consultations and consent, and also the transfer of technology in the areas of pollution abatement, oceanography and sea-bed technology. The United Nations should therefore spare no effort in order to find ways and means of offsetting the costs of the transfer of appropriate technology to developing countries; one such way was by establishing regional training and research institutions.

73. His delegation maintained its previous position that no one international organization should be designated as the sole competent authority on matters of marine scientific research or even on marine pollution at the current stage.

74. Both the Intergovernmental Oceanographic Commission and the United Nations Conference on the Human Environment held at Stockholm in 1972 had recommended that any research programmes undertaken in the zones under the jurisdiction of coastal States must be subject to the consent of the coastal States and provide for their participation. His delegation fully endorsed that view and believed that to go against it would be an unrealistic and anachronistic step.

The meeting rose at 1.05 p.m.

9th meeting

Friday, 19 July 1974, at 3.15 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Scientific research (*continued*)

[Agenda item 13]

Development and transfer of technology (*continued*)

[Agenda item 14]

1. Mr. MOMTAZ (Iran), while recognizing the increasing importance of marine scientific research and the need to facilitate the acquisition of knowledge in that field, emphasized that the requirements of the developing countries must be taken into consideration. Before embarking on the preparation of a juridical régime governing scientific research, the precise meaning and scope of that term should be defined. In the view of his delegation, scientific research activities the results of which could not immediately be used for economic or military purposes should be regarded as pure scientific research.

2. In the national sea and exclusive economic zone, the conduct of scientific research should be subject to the prior consent of the coastal State, on the lines of the provisions of the Geneva Convention on the Continental Shelf.¹ In the zone under national jurisdiction it should be compatible with the research programmes of the coastal State, scientific personnel from that State should participate in the research activities and the results should be placed at the disposal of the coastal State, together with all information necessary for the utilization of such data.

3. In the international zone, the proposed International Sea-Bed Authority would be responsible for safeguarding the interests of the international community as a whole. Scientific research in that area would be subject to the consent of the Authority, which could also engage in scientific research on its own. In that connexion, the technologically advanced countries should be invited to put their know-how and equipment at the disposal of the Authority.

4. Referring to the transfer of technology, he said that technology should cease to be the monopoly of certain States and that all countries should participate on an equal footing in the exploitation of what was termed "the common heritage of mankind". The transfer of technology could be carried out through the Authority, in collaboration with the International Hydrographic Bureau and the Intergovernmental Oceanographic Commission on the lines of the work already carried out in that field by the fisheries commissions.

5. In conclusion, he said that only the basic principles relating to the two items under consideration should be incorporated in the future convention, and the detailed regulations should be left to more specialized bodies.

6. Mr. HERNANDEZ DE ARMAS (Cuba) referred to the importance of the sea in the political and economic history of his country. With the help of friendly States, Cuba had recently begun to develop scientific research, which it recognized as a prerequisite to the rational and intensive exploitation of the resources of the ocean.

7. His country supported freedom of scientific research in the international zone beyond the limits of national jurisdiction and felt that if the concept of the common heritage of mankind was to have any meaning, the results of such research should be freely available to all countries. Furthermore, anti-pollution

regulations and the rules of international law should be observed.

8. With regard to the zone in which the coastal State exercised sovereignty over the renewable and non-renewable resources of the sea-bed and ocean floor and the subsoil thereof and the superjacent waters, his delegation felt that the coastal State had a right and a duty to control scientific research in the area adjacent to its coast up to a limit of 12 miles. The coastal State should also authorize scientific research, without discrimination, in the remainder of that zone up to a distance of 200 miles, provided that the State or organization carrying out the research complied with the following requirements: prior communication to the coastal State of the purposes of the research; participation by the coastal State in the research; immediate availability of data obtained to the coastal State; and observation of anti-pollution regulations and the other rules of international law.

9. With regard to scientific research in the zone under the national jurisdiction of a coastal State, his delegation emphasized that matters relating to enclosed or semi-enclosed seas and straits with opposite or adjacent coasts encircling large expanses of sea should be covered by the convention and that, provided it complied with the aforementioned requirements, freedom of scientific research should be guaranteed, without discrimination and independently of any common economic zones which might be set up as a result of regional or sub-regional agreements or any areas allocated to coastal States for the purpose of exploiting the subsoil. However, he commended efforts to establish regional research institutions and welcomed the establishment of a Marine Affairs Institute by the Government of Trinidad and Tobago.

10. His delegation shared the view that all countries had the right of access to the data obtained through scientific research. However, in the case of the developing countries in particular, that right would have no substance unless it was accompanied by regulations governing the transfer of technology, the training of specialists and scientists from those countries, and the development of research facilities to analyse and utilize such data in the national interest. The proposed International Authority should be responsible for promoting and controlling training programmes for specialists and scientists, the expansion and development of research facilities, and also the transfer of technology to the developing countries on a non-commercial basis. In that connexion, his delegation supported the proposals by the representative of Argentina at the 23rd plenary meeting. The demands of the developing countries for the transfer of technology on non-commercial terms were justified since the wealth and the technological superiority of many developed countries derived in part from imperialist, colonialist and neo-colonialist policies of exploitation of the developing countries.

11. Mr. YTURRIAGA BARBERAN (Spain) said that the future convention should include a set of general articles on the regulation of scientific research, which could subsequently be completed and developed by the specialized international organizations. Such a task was urgent since the Conference on the legal status of ocean data acquisition systems, held in Paris in 1972 had been unable to conclude its work pending the results of the current Conference. The concept of unrestricted freedom of research was no longer acceptable. It was necessary to regulate scientific research and achieve an equitable balance be-

¹United Nations, *Treaty Series*, vol. 499, p. 312.

tween the need to ensure the maximum expansion of scientific knowledge of the sea for the benefit of all mankind and the requirement duly to safeguard the economic interests and security of the coastal State.

12. The following questions had to be answered: what research was to be carried out, where, how and for what purposes? Regarding the definition of research, since it was not easy to distinguish between fundamental and applied research, it was necessary to adopt a unified concept of oceanographic research. As to where research was to be carried out, there was a contradiction between the ocean as a single subject of research and the variety of existing régimes covering different maritime spaces. In view of the legitimate demand of scientists for freedom of research, it was necessary to safeguard the rights and interests of the coastal State in the areas under its sovereignty or jurisdiction. In such areas, the coastal State must give its authorization, be able to participate in the research, and have access to the data obtained. Under those conditions, States should co-operate in research activities, especially when the research was carried out by international organizations, and provide all possible facilities, avoiding unjustified refusals, rapid replies, obstacles such as red tape, etc. There was a need to lay down clear legal rules governing the means of research and defining the rights and obligations relating thereto and the uses of the data and knowledge obtained. Those means were mainly oceanographic vessels, Ocean Data Acquisition Systems (ODAS) and artificial satellites. Lastly, the data obtained from scientific research should be made available in raw and processed form and subsequently published in order to benefit mankind as a whole. Draft articles governing the conduct of scientific research should be based on the principles of peaceful purposes, the equality of States, prior consent of the coastal State for scientific research activities in areas under its sovereignty or jurisdiction and international co-operation among States.

13. His delegation supported the views expressed concerning regulations to govern the transfer of technology from the developed to the developing countries. There were juridical and financial problems but the matter could be resolved given a spirit of good faith and international co-operation. He considered that the international organizations could play an important role in channelling technology by various means to the developing countries, and expressed the hope that the articles drawn up concerning the transfer of technology would lay the foundations of an authentic and substantive body of law, instead of only formal new laws.

14. Miss AGUTA (Nigeria) said that in the general debate in Sub-Committee III of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction in 1973, fundamental or pure scientific research had been defined as a systematic study, investigation or experimental work to acquire knowledge of the natural processes and phenomena occurring in ocean space. The sea-bed Committee had been given the task of formulating regulations to protect the legitimate rights and interests in the oceans of mankind as a whole and of individual States. The position of her delegation on marine scientific research had already been stated at the 34th plenary meeting.

15. With regard to the transfer of technology, her delegation felt that the most effective means of transfer was by training and education. She suggested three methods of achieving that objective: first, the establishment of well-equipped regional or subregional marine scientific research centres in developing countries, possibly through a special agency under the International Sea-Bed Authority; secondly, tying access by developed countries to living resources in the economic zones of developing countries to the training of nationals of those countries in fisheries science, on the basis of equitable bilateral arrangements; thirdly, ensuring that licensing contracts for exploration and exploitation in the international area contained provisions

for the training of nationals from developing countries in oceanography, deep-sea mining technology and data analysis and interpretation. Blueprints and patents for the construction of plant and machinery should be made available to developing countries on reasonable terms. In the view of her delegation, the transfer of technology should be a contractual as well as a moral obligation. Assistance should be in the form of trade, not charity, in order to give that sense of interdependence which was essential for rapid and sound progress, to the ultimate benefit of both the developed and the developing countries and for the common good of mankind. Such a course of action would prevent domination and exploitation by the developed countries and give the developing countries a sense of security and equality and of being heirs to a common heritage.

16. Miss EMICH (Austria) said that over the past decades, there had been increased international co-operation in the field of oceanographic research. The interdependence between fundamental research and scientific activities for profit was quite obvious, but there were also scientific endeavours where the distinction would be difficult to make. Part of the information acquired through such research would undoubtedly become economically significant, and provisions should be made to ensure that that knowledge was applied for the benefit of mankind as a whole. In the territorial sea, all marine scientific research should obviously be subject to the consent of the coastal State. Outside the territorial sea, marine scientific research should in principle be unrestricted and open to all interested countries, including land-locked countries, subject to generally agreed provisions. The coastal State should be given prior notice of research programmes, an opportunity to participate in them and access to all data. She trusted that all countries were aware of the importance of basic non-commercial research, and realized that undue interference with it would be detrimental to the international community.

17. In the area under its jurisdiction, the International Authority should be responsible for the formulation and co-ordination of global scientific programmes, promoting training facilities for scientists from developing and land-locked countries and ensuring their participation in international research projects and the publication and dissemination of the data obtained. On the recommendation of member States, the International Authority should also be able to undertake scientific research on its own account.

18. With regard to the transfer of technology, she emphasized the great interest of land-locked countries in general, and Austria in particular, in training and education with a view to enlarging their expertise in marine scientific research. Land-locked States required adequate information on the exploitation of marine resources, the uses of ocean space and trends in marine affairs as a prerequisite for any decision-making in connexion with their participation in the common heritage of mankind.

19. Mr. BOHTE (Yugoslavia) said that unrestricted freedom of research was no longer acceptable. Freedom of scientific research had not been mentioned among the four explicitly formulated freedoms of the high seas of the International Law Commission, in its commentary on article 27 of the articles concerning the law of the sea adopted in 1956² had stated: "apart from the case of the exploitation or exploration of the soil or subsoil of the continental shelf . . . such exploitation had not yet assumed sufficient practical importance to justify special regulation." By the very same logic, the required conditions for the development of the freedom of scientific research on the customary law basis were lacking. The time had come now for the formulation of special regulations freed from traditional and outdated patrimonial legal concepts which would contribute to the establishment of a modern international régime.

² *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, para. 33.

In the case of exploration and exploitation of the resources of the international sea-bed area, such a régime should be based on the principles of common ownership, common management and equitable sharing benefits. In the international sea-bed area, a logical consequence of the application of the principle of the common heritage of mankind was that marine scientific research activities should be incorporated in the international régime of the sea-bed and regulatory powers given to the International Authority. Within the area under national jurisdiction, scientific research activities should be subject to the express consent of the coastal State. In that connexion, he referred to the proposals submitted by his country to Sub-Committee III of the sea-bed Committee (A/AC.138/SC.III/L.55).

20. His delegation attached great importance to the question of the transfer of technology. It had already stated its views on the matter at the 26th plenary meeting. He looked forward to the appearance of the study on the transfer of technology being prepared by the Secretariat. His delegation seconded the proposal by the representative of Peru that the Committee should hear a statement from the representative of the United Nations Conference on Trade and Development (UNCTAD) on that subject.

21. Mr. KOVALEV (Union of Soviet Socialist Republics) said that his delegation's views on the freedom of scientific research in the world oceans were contained in document A/AC.138/SC.III/L.31. The position taken by some delegations that the freedom of scientific research was not one of the recognized freedoms of the high seas was not supported by current law or usage. Although freedom of scientific research was not specifically included in the freedoms of the high seas mentioned in article 2 of the 1958 Geneva Convention on the High Seas,³ that article stated that the freedom of the high seas comprised, *inter alia*, four freedoms, and that all States should exercise those freedoms "and others recognized by the general principles of international law". The International Law Commission, which had prepared the draft convention, had noted in its commentary on article 27 that the list of freedoms was not exhaustive and that the high seas could be used for other purposes provided that they did not interfere with other uses of the high seas by other States, and it had specifically mentioned the freedom of scientific research. The Convention on the High Seas stated in its preamble that its provisions were generally declaratory of established principles of international law. Usage also supported the idea of freedom of scientific research in the world ocean.

22. Marine scientific research had led to many great scientific discoveries which had increased man's knowledge of his planet, the role of the seas and the potential and actual resources of the sea that could be used to raise the standard of living of peoples, particularly in developing countries. The importance of scientific research was demonstrated by a current experiment, TROPEX-74, a joint venture by 35 countries in Africa, Europe and Latin America, to provide long-term weather forecasts. The importance of scientific research was appreciated by all delegations, even those that felt there should not be complete freedom of scientific research; those delegations should realize that experiments might be hampered in future if there was any restriction on the freedom of scientific research, and that that would be prejudicial to the interests of all countries, large and small.

23. Regulation of scientific research, either by the coastal State or by international machinery, would also open the path to restrictions on research. The authorities responsible for regulating research would inevitably have to consider the potential usefulness of the proposed experiment and ensure that the expenditure involved would not be too burdensome. But it was extremely difficult, even impossible, for scientists to say in

advance what their experiments could lead to. He stressed the danger of giving bureaucrats, even bureaucrats who were themselves scientists, the right to restrict or regulate scientific research and close off any seemingly fruitless avenues of research. The inevitable legal consequence of abandoning the concept of the freedom of scientific research and replacing it by a régime governing such research would be attempts to restrict or even prohibit research in the international area of the sea-bed and in the high seas, including the continental shelf.

24. Turning to the question of research in coastal waters, he recalled that Mr. Strong, Executive Director of the United Nations Environment Programme, had said that several important international research projects could be successful only if also carried out in coastal waters. Although it might be said that all States would be willing to co-operate in such research, there should be a firm legal basis for it. Restrictions on research not related to exploration or exploitation of resources in the extensive economic zones, would, in the view of his delegation, have very grave consequences, particularly for future generations.

25. Recalling the statement made by his delegation at the 22nd plenary meeting, he reiterated his delegation's position that agreement on the most important aspects of the law of the sea, including scientific research, should include provisions recognizing the right of coastal States to establish economic zones extending for 200 miles and to exploit all living and mineral resources in their zones. That approach provided a basis for business-like negotiation to seek acceptable solutions. The basis for negotiation in the Third Committee should be the freedom of scientific research in the world oceans, including freedom of research in the economic zone, which was not related to the exploration and exploitation of its living and mineral resources. Unfortunately, some delegations would not accept that approach, and advocated that the freedom of scientific research be eliminated everywhere, by recognizing the right of coastal States to authorize or reject applications for any research in the economic zone, by granting the same right to the future International Sea-Bed Authority in respect of the rest of the world ocean, including its waters. Such a demand would weaken the very basis for possible agreement. His delegation was willing to take account of the desires and aspirations of all countries, and particularly those of the developing countries. If agreement was reached on the freedom of scientific research, any effort to strengthen the provisions of the convention on co-operation to increase the research capacity of developing countries through participation by their nationals in marine research, training for their nationals, transfer of the results of scientific research and transfer of technological and scientific know-how, would meet with understanding from his delegation. The Soviet Union was willing to co-operate in multilateral programmes for the development and exploitation of the resources of the sea-bed. The positions and interests of all should, however, be taken fully into account if the Conference was to achieve its objective. He expressed his conviction that the spirit of realism and of sobriety and the desire to search for constructive solutions would prevail in the work of the Committee.

26. Mr. MBOTE (Kenya) said that all previous attempts to define marine scientific research had been unsatisfactory, and were not necessary for the purpose of the Committee's work since there was no clear-cut boundary between fundamental and applied research, or between research for peaceful and non-peaceful purposes. It would therefore be best not to waste any time trying to define scientific research, which Kenya took to mean any investigation or activity carried out anywhere for the purpose of acquiring knowledge pertaining to the marine environment, including its resources.

27. The vital importance of marine scientific research did not in any way place marine scientists above the law. On the contrary, it required the close integration, co-ordination and su-

³United Nations, *Treaty Series*, vol. 450, p. 82.

pervision of those activities with a view to avoiding waste and duplication of energy, resources, and time.

28. The so-called freedom of scientific research did not and should not exist in the areas under national jurisdiction, and it was only assumed to exist in the high seas simply because, for the time being, no one was responsible for that area. It was not one of the freedoms explicitly recognized by the existing international law of the sea. In view of that fact, the most important assignment of the Conference was to formulate a convention which, on the one hand, recognized the importance of marine scientific research to development and, on the other hand, the need for those carrying out marine scientific research to co-ordinate their activities and to respect and adhere to the laws and regulations of the coastal State or of the appropriate international authorities.

29. It was the duty and responsibility of coastal States to promote and co-ordinate scientific research in the areas under their national jurisdiction, as it was the duty and responsibility of the proposed International Authority to do the same for the areas beyond the limits of national jurisdiction. Neither the coastal State nor the International Authority could satisfactorily discharge those duties and responsibilities unless given full powers to control and direct marine scientific research in their respective areas. Thus, scientific research in any area was subject to the prior consent of the coastal State or of the appropriate international authority. The coastal State should be prepared to give prompt consent to individuals or organizations wishing to carry out marine scientific research within the areas under its national jurisdiction provided that: the researchers submitted detailed proposals outlining the project, its objectives and its modalities; provision was made for the participation of nationals of the coastal State if they so wished in the planning and execution of the project; the researcher communicated the findings of the research to the coastal State for publication either by the coastal State alone or in co-operation with the researchers; the researcher undertook to comply with coastal State regulations concerning the protection of the marine environment; and the researcher undertook to respect the other legitimate uses of the sea. In the areas beyond the limits of national jurisdiction, similar conditions should be enforced by the appropriate International Authority.

30. With regard to the transfer of technology, the Kenyan delegation believed that the transfer of technology was not merely the transfer of equipment from one country to another, but rather of capabilities from nationals of one country to nationals of another aimed at making the recipient country capable of manufacturing similar or different equipment and of carrying out scientific research and managing its resources independently.

31. More emphasis should be placed on the training of personnel, particularly in developing countries, through the establishment of technical institutions and manufacturing industries. The appropriate United Nations bodies should be invited to promote such projects. Failing such action, developing countries could not be expected to discharge satisfactorily their duties and obligations in respect to the management, development and conservation of marine resources; consequently they would not be able to enjoy the benefits of those resources.

32. Despite the apparent acceptance of the sovereign rights of coastal States over the resources within the limits of their national jurisdiction, some delegations had imposed certain restrictions on those rights which amounted to a denial of the coastal State's right to take appropriate measures to promote scientific research beneficial to its needs and to prevent marine pollution. No State, however, could claim to have sovereignty over any living resources unless it possessed effective powers with regard to those two activities. Should those powers be denied, the concept of the economic zone or patrimonial sea, which had received wide acceptance, would be rendered empty and meaningless. Kenya hoped that such was not the intention

of those who opposed the coastal-zone approach to the problems of scientific research and the prevention and control of marine pollution.

33. Mr. AL-HAMED (Iraq) said that while differing views had been expressed within Working Group 3 of Sub-Committee III of the sea-bed Committee as to the approach which should be taken with regard to scientific research, an objective and co-operative research policy respecting the rights and interests of all States could reconcile those conflicting views.

34. In areas under the jurisdiction of the coastal State, namely, the territorial sea, the continental shelf and the subsoil thereof and zones of specific economic jurisdiction like fishing zones or the patrimonial sea, scientific research was the concern of the coastal State itself and could be carried out by other States only with the consent of the former. In areas beyond national jurisdiction, scientific research on marine living resources should be conducted by the specialized agencies such as Food and Agriculture Organization of the United Nations (FAO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO), with the co-operation and participation of the coastal States and land-locked countries in the proximity. As to the minerals of the sea-bed and the subsoil thereof, research could be governed by the international régime in accordance with the terms of General Assembly resolution 2749 (XXV) of 1970. Concerted programmes of international marine scientific research should be worked out jointly between the international organizations and the States concerned.

35. The participation of developing countries in scientific research projects should be facilitated and encouraged because of the close natural relationship between the national and international areas. The results of international research should be regarded as part of the common heritage of mankind.

36. In areas where there were special circumstances, such as semi-closed seas, scientific research beyond the limits of the territorial sea should be conducted by all the coastal States through regional arrangements, and with assistance from the specialized agencies and the technologically advanced countries. Such assistance might consist of financial contributions or the training of personnel.

37. In view of the complicated and costly nature of the application of technology to the exploration and exploitation of marine resources, it was desirable for a number of States to pool their efforts and capabilities on a regional basis and to seek the assistance of international organizations in obtaining the advanced technology they needed. As the developing countries were well aware, scientific research and technological know-how were the basic elements of economic prosperity.

38. Mr. HAKAPAA (Finland) emphasized the close connexion between scientific research and several other topics being considered by the Conference, in particular the preservation of the marine environment and the exploration and exploitation of the sea-bed and its subsoil, which were being considered by the First and the Second Committees. Continuous co-ordination of all questions related to scientific research being considered by the different Committees was therefore imperative.

39. With regard to the form of the future convention, the Finnish delegation believed that the general provisions concerning scientific research should be placed in a separate chapter, while certain special provisions relating to scientific research should be inserted in various parts of the convention according to their special characteristics.

40. The distinction drawn by the Finnish representative in the sea-bed Committee in March 1973 between fundamental marine scientific research and research aimed at the exploitation of marine resources was, in spite of certain difficulties of interpretation, useful particularly for defining the rights of foreign researchers within the economic zone of a coastal State or on its continental shelf.

41. Scientific research in the international sea-bed should be considered in the context of the principle of the freedom of the high seas. It would not be beneficial to the common interests of nations to restrict that freedom to any considerable extent. Any research carried out in that area should, however, be in accordance with the General Assembly's Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof, beyond the Limits of National Jurisdiction (General Assembly resolution 2749 (XXV)). The International Sea-Bed Authority should be informed in advance of all research projects to be taken in that area and should possess a certain amount of power to ensure that research activities were carried out in the spirit of the Declaration of Principles.

42. The Finnish delegation attached special importance to the principle of that Declaration according to which States should promote international co-operation in scientific research exclusively for peaceful purposes by co-operating in "measures to strengthen research capabilities of developing countries, including the participation of their nationals in research programmes". The efficient transfer of technology was one of the basic means for bringing about a just distribution of the benefits derived from the world's oceans.

43. Mr. NEEDLER (Canada) said that the proper management of the marine environment and its resources depended upon knowledge of the sea. However, intellectual curiosity was also a basic human drive, and there was no greater oppression than that which stifled the spirit of an inquiry. The fundamental objective of the Canadian delegation was to ensure the adoption of provisions promoting the development, dissemination and application of scientific knowledge of the marine environment and facilitating the conduct of scientific research for those purposes.

44. A number of realities had to be taken into account in developing a sound régime for marine scientific research. It was difficult, if not impossible, to distinguish between pure research and research for economic or military purposes. The results of many research programmes were all too often not shared with or made available to the States in whose coastal waters the research had been carried out. Only a few countries had significant marine scientific research capacity. Many countries had not reached a stage of development where they could make full use of such results as were made available to them by other countries or outside agencies. The mere affirmation of the freedom of scientific research did not take those realities into account, since it ignored abuses of that freedom and did not provide for the legitimate interests of coastal States in activities adjacent to their shores. A means for remedying those shortcomings was provided by the concept of management of the marine environment and its resources which had been unanimously endorsed by the United Nations Conference on the Human Environment held at Stockholm in 1972. That concept underlay Canada's approach to the law of the sea and was inherent in the concept of the economic zone or patrimonial sea and the common heritage of mankind.

45. The coastal State must necessarily have the authority to manage and control the resources of its economic zone or patrimonial sea so as to protect fully its economic and security interests. The sovereign jurisdiction of the coastal State over research in its internal and territorial waters and on its continental shelf, already recognized under existing international law, had to be maintained, and complemented so that any research within the economic zone or patrimonial sea not covered by existing law could be undertaken only with the approval of the coastal State. Appropriate criteria for facilitating such approval should be established with due regard to the rights and interests of the coastal State. For research in areas outside national jurisdiction, some system of notification and registration of research programmes with an appropriate international body such as the Intergovernmental Oceanographic Commission or the International Sea-Bed Authority was necessary.

graphic Commission or the International Sea-Bed Authority was necessary.

46. The concept of proper management of marine resources did not rule out international co-operation in marine scientific research, and the Conference should establish certain basic principles in that realm. Marine scientific research should be promoted in general, while States should be encouraged to co-operate with each other and with appropriate international organizations in reaching agreements for the facilitation of such research. Bilateral, regional or global agreements on the exchange of knowledge, information and technology should be promoted or strengthened.

47. The strengthening of the research capabilities of developing countries and the transfer of technology to them was necessary if the developing countries were to benefit from the resources of the economic zone or patrimonial sea and if they were to live up to their responsibilities with regard to the management of marine resources. For such countries, resource development took precedence over scientific development, and, to a certain extent, they had to rely upon scientific research carried out by others. Within areas under their jurisdiction, however, the developing countries wanted to have some voice in setting the priorities for such research, and to participate not only in the execution of scientific ventures by outside agencies, but also in the planning and follow-up of those ventures so as to obtain training for their technical and scientific personnel and strengthen their research capabilities.

48. The transfer of technology should apply to the whole range of uses of the sea, including the exploration and exploitation of sea-bed resources, the utilization and conservation of fisheries, and the prevention and control of marine pollution.

49. Mr. POJANI (Albania) said that his delegation supported the right of the coastal States themselves to define the width of their territorial waters and patrimonial sea and to exercise full national jurisdiction over those areas. It followed from that basic stand that scientific research in the areas under national jurisdiction was subject to the control of the coastal State.

50. Under the banner of the freedom of scientific research, the two super-Powers were trying to secure for themselves the freedom to send spy ships to all parts of the world, to conduct "research" on how they could more easily threaten the freedom and independence of other countries and to seize their fish and mineral resources more effectively.

51. The imperialist Powers which had a monopoly in scientific research had harnessed science in the service of their goals of domination. They feared that the establishment of adequate rules which respected the sovereignty and national jurisdiction of coastal States might hinder scientific research, and they argued that such rules might even be detrimental to developing countries. What was really hindered and threatened by the establishment of appropriate rules was their own policy of aggression and maritime plunder. In opposition to that policy, the coastal States were demanding the establishment of a new law of the sea that would include rules for the conduct of scientific research by methods guaranteeing their political and economic independence. While the developing countries were in need of maritime scientific research and technology, they would not allow themselves to be tricked into purchasing science from the super-Powers at such high prices as to jeopardize their political and economic independence. Developing countries should strengthen their co-operation in the field of maritime research with all other peace-loving countries on the basis of equality, reciprocity and non-interference in the internal affairs of other States.

52. The conduct of scientific research in areas under national jurisdiction should be subject to the prior consent of the coastal State, which had the right to control such research and to establish such rules and take such measures as it deemed neces-

sary whenever such research prejudiced its national interests. The coastal State had the right to participate directly in such research and to receive all the data obtained, the publication or communication of which should be subject to the coastal State's consent.

53. Scientific research in the area beyond national jurisdiction should not be a monopoly of the imperialist Powers and industrially developed countries but should be carried out according to the appropriate rules that were to be established for the benefit of mankind as a whole.

54. Mr. GBILIMI (Guinea) said that his delegation was in favour of scientific research for peaceful purposes as a necessary tool for the exploration and exploitation of marine resources in the common heritage of mankind for the well-being of the international community in general and that of the developing countries in particular. A great many practical questions such as the control of pollution, the selection of fishing grounds and the exploitation of mineral resources depended upon progress in the ocean sciences.

55. No international organization or physical or juridical person should undertake research within the limits of national jurisdiction without the prior consent of the coastal State. The coastal State should also have the right to participate on an equal footing at all stages of the research project. Those intending to carry out scientific research in the territorial waters of a State should also be required to submit well in advance the goals and the object of the research, the nature of the equipment to be used, the number of persons to be involved, the areas in which those activities would be carried out and the proposed period for such research. Coastal States should have the right to visit and check the installations before the beginning of operations and should be able to maintain observers on the research site. Research projects to be carried out within the limits of national jurisdiction should be devised in keeping with the scientific priorities of the coastal State involved, and consultation with the latter should be obligatory.

56. It was a well-known fact that many documents relating to scientific research carried out during the colonial period were missing from certain developing countries while they lay in the archives of the former colonial Powers, often completely forgotten.

57. To put an end to such forms of dependence, research findings, including basic data, samples, and written reports, should be communicated to the coastal States as the work progressed. The publication of certain research findings obtained within the limits of national jurisdiction should be subject to the prior consent of the coastal State.

58. Some form of international machinery possessing adequate authority should be able to regulate wisely the scientific research carried out in the area beyond the limits of national jurisdiction and to communicate the findings to the entire international community.

59. Assistance from the technologically developed countries and the specialized international agencies could be channelled by means of bilateral agreements into the establishment of scientific centres, the financing of research projects, and the local training of personnel in the developing countries themselves. Such local training would have the double advantage of preparing large numbers of researchers and enabling them to adapt their knowledge to the specific realities of their countries. Nevertheless, all efforts to date had failed to reduce the ever widening gap between the developed countries and the so-called developing countries. The progressive deterioration in the terms of trade of the developing countries was due to a lack of equality in the relations between them and the developed countries. There was also the danger that the transfer of technology under existing conditions would result in what might be termed a "deterioration in their terms of transfer".

60. The international machinery that was going to be set up would have to reduce the economic and technological gap

between certain States and others. With regard to international co-operation, the Guinean delegation sought to promote an international co-operation in which there was no deviousness or guile, and no question of begging on the part of the recipient countries.

61. Mr. KAKODKAR (India) said that marine scientific research called for a multidisciplinary, co-ordinated and co-operative effort on a global scale. The Committee, entrusted with the task of working out the legal framework within which such research could be carried out in an orderly and efficient manner, must balance the importance of scientific research against other relevant factors such as national security, the need for effective exploitation of resources of the zone under national jurisdiction, and the responsibility of the International Sea-Bed Authority.

62. Scientific research and transfer of technology covered exploration and exploitation of non-living resources of the sea-bed and ocean floor and subsoil thereof; exploration, exploitation, conservation and management of the living resources of the sea; preservation of the marine environment and the monitoring, control and prevention of marine pollution; acquisition, processing and interpretation of geological, geophysical, and geochemical data concerning the sea-bed and ocean floor and subsoil thereof; acquisition, processing and interpretation of oceanographic data in the marine environment; and the acquisition of general knowledge of the seas and oceans.

63. His delegation supported co-operation in marine scientific research with all other States and international agencies and organizations, and the free exchange of personnel, technology, equipment, training and other facilities. Due consideration should, however, be given to legitimate national interests. Research in the economic zone and territorial waters of a coastal State should be undertaken either by the coastal State itself or with the prior express consent of the coastal State. Information should be provided to the coastal State in an application for research; experts and vessels of the coastal State should be entitled to participate in research; the coastal State should be furnished raw data and samples as well as the analyses and results of such data and samples; and publication of data should be with the express consent of the coastal State concerned. The research agency should comply with the regulations of the coastal State concerning resource management, health, environmental protection and security. Where such regulations were disregarded, the coastal State should have the right to terminate the research activities and take any other steps it considered necessary in accordance with its laws. The coastal State should also be able to reserve certain specific areas of its zone exclusively for research by its own agencies and vessels. Any disputes over marine scientific research in the economic zone of a coastal State should be settled in the judicial tribunal of, and in accordance with the law of, that State.

64. Turning to the question of marine research in the international sea-bed area, he said that the International Sea-Bed Authority should be given the necessary powers to regulate research. He urged the advocates of absolute freedom of scientific research to take account of the basic difficulty of drawing a line between scientific research as such, and activities which affected security, protection of the environment and exploration and exploitation of resources. The Authority should be empowered to regulate scientific research so that it could properly discharge its responsibilities and obligations. Scientific research in the waters superjacent to the sea-bed and ocean floor of the international area and the air space above should be free, subject only to provisions relating to the protection of the marine environment and freedom of navigation and so forth. Activities in the seas would be increasing in future, and that would naturally impose certain restrictions. He stressed that marine scientific research should not form the legal basis for any claim to the area where the research was conducted or to its resources.

65. Turning to the question of the transfer of technology, he said that it was a matter of concern for all because technology had to be developed continuously through joint efforts. In the case of the developing countries, it was of vital interest and unless active and effective measures were taken to transfer to those countries the technology currently in the possession of a few advanced countries, the vast resources of the sea would not be accessible to them. He urged the developed countries which attached great significance to the need for free scientific research to appreciate that the best way to establish a climate of co-operation and trust was to share freely their technology with the developing countries. The legal powers of regulation and control which his delegation advocated for the coastal State would probably provide for very free scientific research, once trust was established through the sincere efforts of the developed nations to transfer their technology to the developing nations. The International Sea-Bed Authority should act as a general reservoir to which all nations should contribute their technology and from which all nations could draw. The questions of particular significance in that context were training of personnel, supply of necessary scientific and other equipment, financial assistance to developing countries, promotion of bilateral as well as multilateral agreements between States and the competent organizations concerned for the transfer of technology and establishment of permanent institutions to ensure regular and systematic transfer of technology and its dissemination.

66. Mr. RUHAİM (Libyan Arab Republic) said that scientific research in the area under national jurisdiction was subject to the approval of the coastal State. Only those States whose existence was sanctioned by the rules of international law could be considered to be legitimate coastal States. States or international agencies wishing to conduct scientific research activities in areas under national jurisdiction should be required to submit in advance a request specifying the objectives of the proposed research, the scientific team to carry it out, the means to be employed, the areas involved, and the period of the research. The coastal State had the right to participate on an equal footing in those research activities. Publication of results should be subject to the prior consent of the coastal State. Scientific research activities should not produce any harm to the renewable or non-renewable resources.

67. With regard to research in the international area, it was necessary to establish a new international régime to carry out such activities, and to establish rules and regulations governing such activities. The results of those research activities must benefit all States without discrimination.

68. With regard to the transfer of technology, a small number of States should not have a monopoly of such technology which should not be kept secret but should be transferred to the developing countries by UNESCO and other international agencies. Technical and scientific training programmes for personnel from developing countries should be set up under the supervision of the proposed International Authority. Developing countries ought to be kept regularly informed about the newest advances in technology.

69. Mr. BAYONNE (Congo) said that scientific research and the transfer of technology could help to establish more equitable economic relations between developed and developing countries. He rejected any definition of scientific research which helped to maintain the gap between the developed and developing countries. To ensure that scientific research was carried out for the good of mankind, the following rules should be observed: the coastal State should have a sovereign right to regulate scientific research in its 200-mile zone; scientific research in that zone could be carried out only with the prior consent of the coastal State concerned; the coastal State should be entitled to participate in that scientific research and to be informed of the details of the research programme and its results; the results of the research should be published by agree-

ment with the coastal State; research should not pollute the marine environment, and research agencies should comply with the national and international regulations on the protection of the marine environment against pollution. Co-operation in scientific research should also be encouraged with a view to increasing the research capacity of the developing countries by strengthening existing research centres and institutes in the developing countries, establishing new centres to meet the real needs of the geographical areas concerned, which could be financed on a regional basis, and providing training for scientific personnel in the developing countries to enable them to utilize the scientific knowledge they acquired through research. That would help to reduce the gap between the developed and developing countries in marine technology.

70. One aspect of scientific research was that related to pollution of the marine environment. As the developed countries were responsible for much of the pollution, their know-how and patents should be used to control pollution and should be accessible to the developing countries.

71. Scientific research in the area beyond national jurisdiction should, in the view of his delegation, also be regulated effectively under the international machinery.

72. Mr. ODA (Japan) rejected the view that scientific research had never been considered one of the freedoms of the high seas. The International Law Commission had explicitly stated, in its commentary on article 27 of its articles concerning the law of the sea, prepared in 1956, that, although only four freedoms—freedom of navigation, freedom of fishing, freedom of laying submarine cables and pipelines, and freedom of flying over the high seas—were mentioned in the draft articles for the Convention on the High Seas, there were other freedoms, including the freedom to conduct scientific research on the high seas. At the 1958 Conference, one delegation had submitted a proposal (A/CONF.13/C.2/L.7)⁴ listing five freedoms of the high seas, including the freedom to undertake research, experiments and exploitation; the fact that that proposal had not been adopted did not mean that the idea of the freedom of marine scientific research had been rejected. The list of freedoms of the high seas in the Convention of the High Seas was not exhaustive, and there was therefore no legal barrier to the freedom of scientific research on the high seas. He maintained that scientific research, at least in the international area, was and should remain open to all without discrimination and without interference by any State.

73. He fully supported proposals that scientific research in the area beyond national jurisdiction should be carried out for the benefit of mankind as a whole and that the results of research should be accessible to all interested States. International scientific co-operation should be fostered to enable all nations to participate in such research on an equal basis and to have reasonable access to the results. It was important to distinguish between research to gain knowledge of the marine environment and exploration as a preliminary step leading to commercial exploitation. Scientific research should not serve as a basis for claims to exploitation, as indicated in the Declaration of Principles. Access to knowledge and information acquired through scientific research should be facilitated through international co-operation. His Government wished to co-operate fully in promoting the transfer of technology and results of marine scientific research to developing countries. Scientific research in the international area should be reconciled with other legitimate uses of the high seas, the most important points being to prevent excessive collection of specimens, undue disturbance of the marine environment, and seismic investigations that might damage the marine environment. Prevention of pollution was extremely important.

⁴ *Official Records of the United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. 58.V.4), vol. IV, Annexes.

74. The task of the Committee was to establish a legal framework under which freedom of scientific research of the ocean could be safeguarded as fully as possible and results of research exchanged and disseminated.

75. Mr. GUEYE (Senegal) said that scientific research and the transfer of technology were very important to his country and to all developing countries, as indicated in the Addis Ababa and Mogadiscio Declarations of the Organization of African Unity (A/CONF.62/33). Although scientific research constituted a whole, a distinction could be drawn between pure research and industrial research. The question of how to regulate research, particularly industrial research, which was important for developing countries, was one that required urgent solution. Different States or groups of States should be able to call on international organizations or industrialized countries to carry out industrial marine research which would be of use to their economy, for example, research on the conservation and exploitation of fish resources, pollution and accident prevention. International organizations and industrialized countries should be able to carry on research in the territorial waters or economic zone of a coastal State, if that State approved the research programme and conditions; a coastal State could hardly refuse an application to carry out research if the usefulness of the research was established and if it would be furnished with the results of the research.

76. Transfer of technology was of vital importance to the developing countries, and personnel qualified in marine technology were needed by the developing countries. International organizations and developed countries should give every encouragement to training institutes such as those in France and the United States of America, and such institutes should also be established at the regional level.

77. The CHAIRMAN, summing up the deliberations of the Committee on scientific research and transfer of technology, said that the need to promote marine scientific research to increase man's knowledge of the phenomena and processes of the marine environment for the rational management of the resources of the sea and preservation of the marine environment for the benefit of all had been accepted by all delegations. There also seemed to be complete agreement on the need to establish a viable framework of general conditions and requirements for the conduct of marine scientific research. Suggestions had been made concerning bilateral, regional and global co-operation in international scientific research, and on the dissemination of knowledge, the exchange and publication of scientific data, with increasing stress on the role of international institutions directly or indirectly involved in marine scientific research.

78. The main issue that had emerged was the proper determination of the scope and extent of the rights and obligations of coastal States in the zone adjacent to their territorial sea and of all other States engaged in marine research in that zone.

Different views had been expressed on the relationship between coastal States and other States, some suggesting that the coastal State should give prior authorization for and should be able to participate in the research in that zone. He suggested that the Committee should give consideration to the modalities of co-operation between the coastal State and foreign States carrying on research in the zone adjacent to the territorial sea.

79. The Committee should also consider the feasibility and desirability of distinguishing between fundamental non-commercial scientific research and investigation, on the one hand, and economically oriented marine research and exploration on the other hand.

80. Interesting proposals had been made on the transfer of technology to developing countries by increasing their research capacity and training their nationals. A study was being prepared by the Secretariat on that subject. There was already a very broad basis of agreement in the Committee, and it should now proceed to draw up draft articles on the transfer of technology.

81. The Committee should now begin practical negotiations on the major outstanding issues with a view to identifying areas of agreement. General principles and draft articles for inclusion in the future convention should be prepared, and attempts should be made to reduce or eliminate the alternative formulations of existing draft articles. He expressed his conviction that the spirit of co-operation would continue to prevail. The Committee should make use of the preparatory work done before the Conference and the proposals which had been submitted at recent meetings as a basis for negotiations.

82. Replying to a question from Mr. KOVALEV (Union of Soviet Socialist Republics), he said that the Secretariat study on the transfer of technology would be made available as soon as possible.

83. Mr. BUSTANI (Brazil) requested clarification from the Chairman as to whether he had been referring to the 200-mile economic zone under the national jurisdiction of coastal States when he had spoken of the "zone adjacent to the territorial sea".

84. The CHAIRMAN replied in the affirmative; he had used the expression "zone adjacent to the territorial sea" in order to preserve his impartiality.

The meeting rose at 6.30 p.m.

10th meeting

Friday, 26 July 1974, at 3.30 p.m.

Chairman: Mr. YANKOV (Bulgaria).

Reports of the Chairmen of the informal meetings

1. The CHAIRMAN drew the attention of representatives to the following documents which had been circulated and which were pertinent to the deliberations of the Committee: the text of the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area (A/CONF.62/C.3/L.1), which had been circulated for reference at the request of the representative of Denmark; CRP/MP/2; CRP/MP/3/Add.1 containing proposals and amendments to WG.2/Paper No. 8/Add.2 in the informal comparative table of texts on the

preservation of the marine environment (CRP/MP/1) and the texts contained in volume I, pages 86 to 88 of document A/9021 and Corr.1 and 3.

2. Mr. VALLARTA (Mexico), speaking as Chairman of the informal meetings dealing with item 12 (Preservation of the marine environment), said that discussions had taken place in the morning and afternoon of 24 July and in the morning of 25 July. It had been decided to have a fresh reading of the texts prepared by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Juris-

diction contained in document A/9021 and Corr.1 and 3. It had also been decided that first there would be no general debate on texts or amendments during the current reading; secondly, delegations wishing to make amendments or revisions should submit them together with the relevant explanations when each text was being considered; thirdly, there should be no interventions either for or against proposals during the consideration of texts; fourthly, the Secretariat should reproduce amendments and additions for the use of the small informal negotiation and drafting group to be set up with a view to reaching agreement on specific texts and reducing alternatives to a minimum. That group would consist mainly of sponsors of amendments or additions and would be open to participation by all States; and fifthly, the small informal negotiation and drafting group would not meet at the same time as the Third Committee or any of its subsidiary organs in order to enable smaller delegations to participate fully if they so wished.

3. Proposals, amendments, additions and explanations concerning WG.2/Papers Nos. 3, 8 and Add.2, and WG.2/Papers Nos. 9, 7, and 10 and Add.1 had already been considered. Those documents, together with the working papers and documents of the sea-bed Committee, would form the basis for the work of the small informal negotiation and drafting group. WG.2/Papers Nos. 11 to 15 had not yet been considered.

4. The CHAIRMAN drew the attention of the Committee to the fact that each of the informal working groups had only eight full working days left for their deliberations. If the groups continued to review work already done, the final outcome would not be very encouraging. He would welcome any development of a procedural nature which might expedite their work. Though no proposals were forthcoming, he assumed that the Committee had taken note of the informal deliberations with deep concern.

5. Mr. METTERNICH (Federal Republic of Germany), speaking as Chairman of the informal meetings on items 13 and 14 (Scientific research and Development and transfer of technology), made a progress report. The Third Committee had held three informal meetings on 23 and 25 July, on those items. To date, 132 speakers had taken the floor and 13 informal proposals had been introduced in writing and would be made available in all official languages. In addition, two informal meetings had been held for *ad hoc* consultations with interested delegations.

6. The informal meetings had based their work on the set of formal proposals introduced in Sub-Committee III of the sea-bed Committee in 1973 and texts produced during the informal consultations at the 1973 Geneva Session of Working Group 3 of that Sub-Committee. At the request of some delegations, an informal comparative table containing the above-mentioned proposals and texts had been issued by the Secretariat (CRP/Sc. Res./1). The table had been revised after an exchange of views and an informal meeting on 23 July. It did not, of course, preclude in any way the informal or formal introduction of new proposals. The informal meetings had considered point 1 of the comparative table and had carried out a first reading of the text on page 45 of that document. It had received four informal proposals, two of which were contained in CRP/Sc. Res./2 and 4; further proposals would be issued for the next meeting of the informal session.

7. Alternative texts concerning the question of the legal implications of marine scientific research (CRP/Sc. Res./1, page 45) had also been considered. Discussions had eventually centred on a single, new informal proposal contained in CRP/Sc. Res./3. In particular the words "national jurisdiction" seemed to be controversial. An amendment had been submitted by a delegation and would be issued as a document for the next meeting. The question had been raised as to whether the words "national jurisdiction" should remain in the text of proposals on the explicit understanding that the use of the term "national jurisdiction" would not prejudice its

meaning and scope, which would be defined in the convention. Interested delegations had been invited to hold informal consultations to find a compromise solution.

8. The informal meeting held on 25 July had considered point 2 of the informal comparative table (CRP/Sc. Res./1, pages 45 to 47) and various informal proposals which would be issued before the next informal meeting.

9. When appropriate, the setting up of informal consultation groups composed of sponsors of proposals would be considered, particularly with regard to items which had not been discussed in the sea-bed Committee and for which there had been no attempt to consolidate texts.

10. The CHAIRMAN said that his remarks concerning the progress of the discussions on item 12 were even more valid with regard to items 13 and 14. As there was a lack of specific proposals on item 14, he appealed to delegations to submit proposals on that very important issue.

11. Mr. YTURRIAGA BARBERAN (Spain) requested that document A/CONF.62/C.3/L.1, which contained the text of the Helsinki Convention in English, should be translated and circulated in all working languages.

12. Mr. AUCHERE (France), Mr. GAMBOA (Chile) and Mr. RODRIGUEZ (Venezuela) supported that proposal.

13. Mr. KOVALEV (Union of Soviet Socialist Republics) said that the official Russian translation of the Helsinki Convention would be made available in the near future. He would therefore prefer the Convention not to be translated into Russian by the Secretariat so as to avoid having two different Russian versions.

14. He asked why the Helsinki Convention had been issued as document A/CONF.62/C.3/L.1, rather than as an information document, and suggested that the reference symbol of the document should be changed.

15. Mr. STEINER (Secretary of the Committee) recalled that the Committee had decided to issue the text of the Convention in English only, because States parties to the Convention were to receive the official Russian translation later.

16. Mr. YTURRIAGA BARBERAN (Spain) reiterated his request for a translation into Spanish of the text of the Helsinki Convention. If the Soviet delegation so desired, it need not be translated into Russian.

17. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee decided to have the text of the Helsinki Convention translated and circulated in all the working languages of the Conference, with the exception of Russian, and that when the official Russian translation was received, it would be published.

It was so decided.

Preservation of the marine environment (continued)*

[Agenda item 2]

18. Mr. MBOTE (Kenya) introduced his delegation's revised draft articles for the preservation and protection of the marine environment (A/CONF.62/C.3/L.2). His delegation had participated in the work of the sea-bed Committee and in the negotiations during the current Conference. As a result, it had considered it necessary to reformulate and elaborate the draft articles originally submitted to the sea-bed Committee (A/AC.138/SC.III/L.41) and to incorporate certain new ideas.

19. His Government attached great importance to the preservation, protection and improvement of the human environment, including the marine environment. As a coastal State, Kenya had a special interest in the mineral and living resources of the sea. Furthermore, it was located near one of the busiest oil tanker routes in the world. In recent years, Kenya had made substantial investments in the development of tourism, which

*Resumed from the 6th meeting.

was based mainly on its immense wild life resources and beaches, both of which depended on proper maintenance of the health of its land and marine environment.

20. His delegation considered that sovereignty and jurisdiction over the marine resources of the economic zone were inseparable from the juridical rights of the coastal States to protect and preserve the environment which contained those resources. In that connexion, he mentioned the draft articles on the economic zone submitted by his delegation to the sea-bed Committee (A/AC.138/SC.II/L.10).¹ Furthermore, his delegation held the view that pollution of the marine environment in areas beyond the limits of national jurisdiction could have direct effects on zones under national jurisdiction.

21. Articles 3 to 10 of document A/CONF.62/C.3/L.2 contained provisions regarding the duties and obligations of States, of the proposed International Sea-Bed Authority and of other international bodies to protect and preserve the quality and resources of the marine environment and to take appropriate anti-pollution measures. Such measures, of course, should not interfere unjustifiably with the other legitimate uses of the sea.

22. There was an obvious need to co-ordinate co-operation among States and international bodies. His delegation considered that the United Nations Environment Programme was the most suitable international organization to undertake that responsibility. Article 11 contained provisions to that end. The modalities of such co-operation were provided for in articles 12 to 16.

23. Referring to the need to increase the capabilities of States to fulfil their duties and obligations in regard to the prevention of pollution and the protection of the marine environment, he appealed to the relevant specialized agencies of the United Nations to increase their efforts in the promotion of scientific, educational, technical and other assistance to developing countries, particularly Africa, which currently lagged behind all other continents with regard to the volume of landed marine living resources, in spite of the fact that the waters surrounding the continent were considerably fertile.

24. His delegation also considered that developed States should play a major role in enhancing developing States' capabilities to explore, exploit and rationally manage marine resources for the benefit of mankind as a whole, through appropriate joint ventures or other bilateral arrangements.

25. Articles 19 and 20 provided for the development and utilization of monitoring facilities.

26. With regard to the establishment of rules and regulations, his delegation considered that States should co-operate on a regional or international basis to formulate uniform and enforceable standards with regard to areas within the limits of national jurisdiction, taking into account special situations such as straits, the Arctic and Antarctic regions, enclosed and semi-enclosed seas and archipelagic waters on the lines of the provisions of articles 21 and 23. Similarly, article 22 provided for the adoption by the Authority of appropriate rules and regulations in areas beyond the limits of national jurisdiction. His delegation considered that the United Nations Environment Programme should play an important role in the formulation of standards, as stated in article 24.

27. Articles 25 to 28 had been formulated with a view to ensuring that the States and the Authority would undertake to enforce national or internationally adopted rules and regulations against marine pollution from all sources in the areas under their respective jurisdiction.

28. In the view of his delegation, the question of liability was a matter for the courts to determine. However, it considered that States and the Authority should be held responsible for

damage to the marine environment under the terms of articles 29 and 30.

29. His delegation's views on the question of compensation for damage were still under consideration but it favoured full compensation to the coastal State for damage caused. With regard to the question of the settlement of disputes arising from the interpretation or application of certain articles, his delegation was of the opinion that the coastal State was competent to settle all disputes arising within the limits of national jurisdiction, while disputes arising from the areas beyond the limits of national jurisdiction should be settled through the appropriate international judicial institutions.

30. In conclusion, he emphasized his delegation's willingness to consider comments on the draft articles it had submitted in a true spirit of negotiation.

Mr. Jacovides (Cyprus), Vice-chairman, took the chair.

31. Mr. PAPAGEORGIOU (Greece) said that regulations and enforcement were two of the most basic and most controversial parts of the Committee's work, and represented two distinct areas. For that reason, his delegation had chosen to concentrate on enforcement and submit a complete draft (A/CONF.62/C.3/L.4) on that subject which provided a method for the enforcement of whatever regulations the Conference would subsequently adopt.

32. In submitting the draft, his delegation was motivated by the desire to provide a basis for compromise, since various drafts submitted by other delegations, while useful and constructive, did not seem adequate for that purpose.

33. The classification and arrangement of the subject-matter in document A/CONF.62/C.3/L.4 was important, and could assist the Committee's further deliberations even if its treatment of substantive issues could not be accepted.

34. The method for enforcing regulations relating to ship-based pollution should be effective without, however, creating unreasonable obstacles for international navigation or unnecessarily subjecting ships to the control of a multitude of national authorities. For that purpose, the draft articles created specific obligations for the flag State to enforce the convention and provided for supplementary enforcement by the coastal State or the port State when the flag State could not or did not proceed to enforcement within a specified time-limit.

35. Articles 1 and 2 were not controversial. Article 3 was inspired by the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter signed in London in 1972 and should not prove controversial either.

36. The process of enforcement had been divided into the three separate phases: inspection (article 5), proceedings (article 6), and enforcement of sentences (article 8), to facilitate compromise. In article 6 distinctions had been made among different kinds of violations committed in various zones of the sea also to facilitate an acceptable solution. Article 7, concerning the non-duplication of proceedings, should be generally acceptable. Article 8 created a world-wide network for the punishment of those who violated the convention.

37. Article 9, which included provisions similar to those of the International Convention for the Prevention of Pollution from Ships signed in 1973, should not cause difficulties.

38. The Greek delegation did not claim that its draft articles were perfect, and it was prepared to accept additions, amendments, and criticism which might improve the draft. The text was offered as a compromise, or at least as a valid basis for compromise negotiations. The primary right of the coastal State to enforce regulations concerning land-based and sea-bed pollution, as well as extensive supplementary rights to enforce regulations against ship-generated pollution had been recognized, thus accommodating the zonal approach. Finally, an important role had been given to the port State for the enforcement of the convention.

¹ *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 and corrigendum, annex III, sect. 8.*

39. The time had come to bring opposing views closer together. Since the first part of every article provided a neutral framework, with the points for negotiation concentrated in the last one or two lines of each article, the proposed draft was a useful tool for negotiations.

40. Mr. ODA (Japan) said he wished to make several preliminary observations concerning the Kenyan and Greek draft articles.

41. He noted the many references to the International Authority in the Kenyan draft and the fact that its powers, for the purpose of establishing binding standards to control pollution, would, as envisaged in article 8, extend to the water column beyond the limits of national jurisdiction. If by the "international authority" the Kenyan draft meant the International Sea-Bed Authority which was under consideration in the First Committee, it should be pointed out that there was no thought of granting a competence to the International Sea-Bed Authority as wide as that proposed in the Kenyan draft. His delegation favoured the establishment of a proper order in the seas beyond national jurisdiction, but did not, however, see the need for any international organization to regulate activities in that area.

42. The Kenyan draft articles emphasized the close link between the resources jurisdiction of the coastal State and its competence to prevent marine pollution in the areas adjacent to its coasts. Japan had submitted a proposal (A/AC.138/SC.III/L.49) to the sea-bed Committee the previous summer which embodied a zonal approach to pollution control, but the intended zone over which the coastal State's competence for pollution control was to be extended was completely different in nature and in breadth from any resources jurisdiction.

43. With regard to the competence for enforcing standards to prevent marine pollution, his delegation favoured the flag-State formula as explained at the 5th meeting of the Committee. The Japanese delegation was aware, however, that the flag-State formula alone might not suffice to prevent marine pollution. For that reason, it would be appropriate to give certain enforcement powers to the coastal State. The standards to be enforced by the coastal State had to be international, not national, since it was difficult to accept the idea that coastal States should be able to enforce national standards on vessels in transit. The coastal State should have competence in cases of dumping or discharge in violation of international standards.

44. Turning to the Greek draft articles, he wondered about the suitability of the six-month period allowed in article 6 for the flag State to institute proceedings before the coastal State or any port State might do so, since it was not unusual for a ship not to return to a port of its flag State within that period. In addition, there was no great incentive for port States to initiate proceedings with regard to pollution violations which took place far from their own territories.

45. He wished to request a clarification with regard to the enforcement of sentences by any port State, since the enforcement of foreign judgements posed certain problems in view of the national legislation of many countries.

46. Mr. APPLETON (Trinidad and Tobago) observed, with regard to article 2 of the Greek draft articles, that pollution arising from the exploration and exploitation of the sea-bed normally had its origin in off-shore oil wells, pipelines, or natural seepage. Mention of the flag State therefore seemed irrelevant in connexion with such pollution and he requested a clarification from the Greek representative.

47. Mr. TIMAGENIS (Greece), replying to the question asked by the representative of Japan concerning article 6, paragraph 2 of document A CONF.62/C.3/L.4, said that he would be willing to negotiate on the proposed time-limit of six months, although he himself felt that it would be quite adequate, because it dealt with initiating proceedings and not with arresting the ship or enforcing the sentence, which could be

done by any port State in accordance with article 8 of the draft. In connexion with the difficulty of enforcing foreign judgements, mentioned by the representative of Japan, he said that although there might be some difficulty for some States, the Conference was trying to create a new law for effective control of marine pollution, and sentences for violation of provisions concerning the prevention of pollution should not be regarded as civil or criminal sentences but should be treated differently. The provision in article 6, paragraph 2, of the draft that the coastal State could institute proceedings in case of violation of regulations within the economic zone amounted to a concession by his delegation, in an effort to present a compromise text. The intention was that if the flag State took no action, the coastal State which had suffered the damage should take action and, if the vessel had already left the area, the port State should be placed under an obligation to take action; thus, there was no point in an incentive—great or small—for port States to initiate proceedings as they were under an obligation to do so. The purpose of authorizing the coastal State to request any port State to institute proceedings was to avoid unnecessary stoppage of ships in transit.

48. Replying to the representative of Trinidad and Tobago, who had requested clarification of article 2 of the draft, he said that it was quite usual for the exploration and exploitation of the sea-bed to be made from ships, fixed or floating platforms or drilling installations. In that context, the coastal State had the primary right to enforce compliance with regulations in the area under its national jurisdiction; it was to make enforcement even more effective that the flag State should also be obliged to ensure compliance with regulations. Thus, the coastal State and the flag State would ensure compliance in the economic zone, and the flag State would enforce compliance in areas beyond national jurisdiction. He interpreted "flag State" as referring to any State with which a ship was registered and also any State in which installations that could cause pollution, such as drilling platforms, were registered. Article 7 of the draft provided an answer to the priority for various States to enforce the convention.

49. He stressed that the main aim of the draft articles was to impose the obligation on States to enforce compliance with provisions for the protection of the marine environment, rather than to grant rights to States.

50. Mr. RASHID (Bangladesh) requested clarification of the implications of article 5, paragraph 2, of the draft articles submitted by Greece. The use of the word "serious" to qualify pollution seemed to him to introduce a subjective element and made the right of the coastal State to inspect ships subject to certain conditions. He felt that the coastal State should have the same right as the flag State to inspect ships at any time deemed appropriate.

51. He also requested clarification of the relationship between article 6, paragraph 2, and article 8. Article 6, paragraph 2, stated that if the flag State took no action, the coastal State or any port State could take action, while article 8 provided for enforcement of the sentence only by the port State. Article 7 referred to the "contracting State", which could even refer to land-locked States.

52. Mr. TIMAGENIS (Greece), replying to the representative of Bangladesh, agreed that the use of the word "serious" in article 5, paragraph 2, of the draft could be one of the points to be negotiated with a view to arriving at a less subjective formulation. He pointed out, however, that from a practical point of view the coastal State need not make any inspection since the evidence connected with pollution could not be destroyed and the inspection could always be made by any port State. Nevertheless, article 5, paragraph 2, of the Greek draft intended to give a limited right of inspection to coastal States in cases of serious pollution. If the word "serious" was deleted, the coastal State, the State through whose territorial sea or economic zone the ship was in transit, could stop a ship at any time for the

purpose of inspection. In that connexion he stressed the need to avoid, as far as possible, stoppage of ships in transit.

53. With regard to article 6, paragraph 2 of the draft, he said that the purpose of authorizing the coastal State or any port State, as well as the flag State, to initiate proceedings, was to impose obligations on as many States as possible to enforce the convention. Article 6 was consistent with article 8: article 6 dealt with proceedings, while article 8 dealt with enforcement of sentences.

54. With regard to article 7, he said that articles 2, 3 and 6, referred to in article 7, would not give land-locked countries the right to enforce the convention unless they were flag States.

55. Mr. HASSAN (Sudan), commenting on article 5, paragraph 2, of the draft articles submitted by Greece, expressed agreement with the representative of Bangladesh that the use of the word "serious" introduced a subjective element. He also suggested that the word "substantially" in article 5, paragraph 4, introduced another subjective element. If the certificate was valid, the condition of the ship should surely correspond substantially to the particulars in the certificate.

56. Mr. TIMAGENIS (Greece) said that the second sentence of article 5, paragraph 4, to which the representative of Sudan had referred, had been taken from the text of the International Convention for the Prevention of Pollution from Ships, adopted in London in 1973, and was therefore a negotiated and compromise text. In any event, article 5, paragraph 4, should be read with article 5, paragraph 1, which imposed the obliga-

tion for the flag State to inspect the ship regularly, and article 4, paragraph 3, which imposed the obligation for the flag State to issue a certificate after due inspection, the certificate being valid for all States parties. The coastal or port State inspecting a ship should ensure that a proper certificate had been issued; if it had, no further action would normally be taken; however, if the ship was apparently or substantially unseaworthy, despite the valid certificate, then the right of further inspection would be given to the coastal or port State.

57. Mr. MBOTE (Kenya), replying to comments made by the representative of Japan on the draft articles submitted by his delegation, said that the International Authority should be empowered to enforce compliance with provisions for the prevention of pollution in areas beyond national jurisdiction, because pollution in such areas could easily drift to areas under national jurisdiction. Some authority must ensure that the standards were complied with in the international area. Activities in the water column should also be controlled and regulated, perhaps not by the International Authority, but by some body such as the fisheries commissions of the Food and Agriculture Organization of the United Nations. His delegation did not feel that it would be too cumbersome to give the International Authority, whose establishment was being considered by the First Committee, powers to ensure that provisions for the prevention of pollution were complied with. His delegation would make the necessary relevant proposals in the appropriate forum.

The meeting rose at 5.40 a.m.

11th meeting

Monday, 5 August 1974, at 10.55 a.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Reports of the Chairmen of the informal meetings

1. The CHAIRMAN once again drew the attention of the Committee to the estimated time available for considering the items. Of the 22 working days remaining, four would be devoted to the general report to the plenary meeting, and at least three to official meetings of the Committee, leaving approximately seven days for each of the two items.

2. Mr. VALLARTA (Mexico), speaking as Chairman of the informal meetings on item 12 (Preservation of the marine environment), said that in the previous week informal meetings had been held on 30 July and 1 August. At those meetings the revision or second reading of the texts prepared by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, covering the following documents and items, had been concluded: WG.2/Paper No. 12 on technical assistance; No. 13 on observation; No. 11 on the question as to whether economic factors should be considered in determining whether States were complying with their obligations under the convention with regard to land-based sources of pollution of the marine environment; No. 14 on the obligation of States to put an end to activities when they were denounced as in violation of international law; No. 15, containing various texts on rules governing sources of land-based marine pollution, marine and vessel-based sources of pollution, and on the competence of each State to establish rules.

3. As had been agreed previously, all the amendments submitted appeared in Conference Room Papers Nos. 5 to 9, which would be examined and studied by a small negotiating and drafting group.

4. On 1 August he had convened for the first time the special drafting group, which would consider all proposals officially submitted both to the sea-bed Committee and to the Conference, and also all suggestions and amendments submitted during the second reading and revision of the texts previously prepared, and any suggestions that might arise within the small special working group.

5. The group had already started its drafting work in connexion with the item "Special obligations of States" (WG.2/Paper No. 8/Add.2, and CRP/MP/3 and Add.1) and had before it a consolidated text, prepared by himself, with the help of the Secretariat.

6. On 1 August there had been informal discussions regarding a method of work suggested by the Chairman, with a view to conducting the study in an orderly and objective manner when dealing with the crucial questions of rules, jurisdiction and application.

7. It had not been possible to reach agreement at the meeting, but informal discussions had continued and a method of work had been decided on whereby the question of rules, jurisdiction and application would be studied, having regard to the source of the pollution to be controlled, since it had been agreed that the different sources of pollution called for different treatment, without prejudice to the fact that all the rules would later be considered as a whole.

8. Mr. METTERNICH (Federal Republic of Germany), speaking in his capacity as Chairman of the formal meetings on items 13 and 14 (Scientific research and Development and transfer of technology), said that four meetings had been held the previous week.

9. The first reading of the question of marine scientific research as the basis for legal claims could be concluded with an agreement on the single compromise text contained in CRP/Sc.Res./3, with alternative disclaimers concerning rights of coastal States.

10. The discussion had continued during those meetings on items 2 (a) and (b) of the informal comparative table (CRP/Sc.Res./1). Many delegations had referred to both items and a number of amendments had been submitted. The proposals on item 2 (a) were included in documents CRP/Sc.Res./8/Rev.1, and CRP/Sc.Res./10, 11, 15, 18 and 24. The proposals on item 2 (b) appeared in documents CRP/Sc.Res./15 to 17 and 19 to 23.

11. After detailed discussion on both items it had been decided that the best course would be to send all the documents mentioned, together with the texts appearing in the informal comparative table, to a special negotiating group, which would do its best to draft a single text for each item, or at least to reduce the number of alternatives.

12. He was pleased to inform the Committee that the various delegations which held similar views had met to consider the texts and that it would be appropriate if all delegations which had submitted texts were to participate in that group, which would advise the informal meetings as soon as a consolidated text was ready.

13. The next informal meeting would begin to examine item 2 (c), but the convening of that meeting would depend on the progress made in the informal negotiating group.

14. The CHAIRMAN said that the progress was encouraging, but unfortunately there was still no formal proposal on item 14, with the exception of one which would be submitted during the current meeting.

15. He called the Committee's attention to the fact that there would be an opportunity to consider an introductory study prepared on the item by the Secretariat, which could serve as background material.

Preservation of the marine environment (*continued*)

[*Agenda item 12*]

16. Mr. STEINER (Secretary of the Committee) presented document A/CONF.62/C.3/L.3, which had been prepared by the secretariat of the Conference at the request of various delegations, and which dealt with the provision of basic information and background material that might serve as the basis for a later agreement.

17. Part I contained an introduction in which the meaning of marine technology was defined; it also included a table of marine activities.

18. Part II covered methods of acquiring and transferring marine technology, which were closely associated with the type of capability that the recipient country desired to acquire and also depended on the characteristics and situation of the marine resources, and the nature of the sea-bed in general.

19. Part III described the obstacles and problems connected with the acquisition and transfer of marine technology. Specific examples were given of certain problems that might arise, although it did not constitute an exhaustive review.

20. Part IV enumerated ways and means of improving the acquisition and transfer of marine technology. Among the different possible measures, mention was made only of the following: information needs; measures to meet the need for expertise and equipment; training and education; possible action at regional and subregional levels; and appropriate actions which might be taken by the United Nations.

21. Part V embodied a summary of the suggestions contained in the paper concerning possible action for enhancing the transfer of marine technology in order to facilitate the work of delegations.

22. Mr. JAIN (India) presented document A/CONF.62/C.3/L.6, entitled "Draft articles on a zonal approach to the preservation of the marine environment", sponsored by 10 countries, namely, Canada, Fiji, Ghana, Guyana, Iceland, India, Iran, New Zealand, Philippines and Spain. In preparing the document, the sponsors had taken into consideration the interests and viewpoints of the main interest groups represented in the Committee. According to his understanding, those were the following: first, the interests of coastal States whose main concern was to protect the marine environment of the seas adjacent to their coasts in areas under their national jurisdiction and/or sovereignty; secondly, the interests of the large shipping States, whose main concern was to protect shipping against such measures taken by the coastal States in connexion with the prevention and control of marine pollution as would, according to them, hinder the free flow of navigation; thirdly, the interests of the developing countries, whose main concern was their economic development, and which favoured such rules and measures as would protect their marine environment without hampering their economic development or imposing on them unduly burdensome environmental costs; and fourthly, the interests of countries situated in special or critical areas, such as enclosed or semi-enclosed seas or international straits which, because of their characteristic geographical features or for reasons of the passage of heavy international traffic in marine areas adjacent to their shores, were specially vulnerable to pollution.

23. He recalled that India had a long coastline of over 4,000 miles, and that a considerable volume of international shipping passed close to its shores. Moreover, India possessed a rapidly growing merchant fleet, and wished to ensure that its ships could visit all areas of the world without difficulty. Further, India was a developing country and desired to ensure that the environmental standards adopted did not impose unduly burdensome costs on its economy.

24. The zonal approach implied that, in a defined area adjacent to its coasts, which would be coextensive with its economic zone, the coastal State had certain rights and responsibilities in regard to management of the environment in that area. The essence of the proposal was contained in articles 6 to 9. Article 6 referred not only to the rights of coastal States, but also to their duties with regard to management of the marine environment within the zone. In articles 6 and 7, provision was made for the coastal State to have jurisdiction to take measures and enforce its laws and regulations for the purpose of preventing marine pollution in its economic zone. Article 7 provided that such measures, laws and regulations had to take into account internationally agreed rules, standards, recommended practices and procedures. In respect of vessel-based pollution, provision was made that the laws and regulations of the coastal State should conform with internationally agreed rules and standards, except in specially vulnerable areas, where the coastal State would be empowered to apply more stringent measures, although, in order to promote uniformity, those stricter measures, laws and regulations would be required to conform with accepted scientific criteria. The State adopting them was under an obligation to notify them to other States through the competent international organization.

25. Articles 8 and 9 laid down that the rights and jurisdiction of the coastal State in the zone had to be exercised in such a manner that they would not interfere unduly with other uses of the sea, such as freedom of navigation, overflight and the laying of cables and pipelines.

26. The interests and needs of the developing countries had been taken into account, first, in article 5, where it was provided that nothing in the articles should derogate from the sovereign right of a State to exploit its own resources pursuant to its environmental policies and in accordance with its obligations connected with pollution control; secondly, article 3, paragraph 1, provided that States should take all necessary

measures for marine pollution control from any source, using the best practicable measures in accordance with their capabilities and national environmental policies.

27. The various obligations relating to the control of pollution from different sources were laid down in articles 1 and 2. Article 2, paragraph 2, dealt with regional co-operation.

28. At the end of the proposal, it was stated that further provisions would be necessary on the mechanism for the formulation of rules and standards, and enforcement thereof outside the zone, as well as on the questions of liability, intervention and other matters.

29. In conclusion, he said that, when the word "rules" was used in the English text, that referred basically to principles, whereas the word "regulations" referred to the practical translation of such principles into laws, agreements and other legal provisions.

30. Mr. SADEGHI (Iran) said that, in drafting document A/CONF.62/C.3/L.6, the sponsors, including his own country, had encountered certain difficulties in arriving at general agreement on the different texts, since not all of them shared the same positions with regard to the issues embodied in the draft articles. Nevertheless, they had overcome the difficulties referred to in a spirit of furthering the work of the Conference and because the draft articles, as was indicated in the introduction, did not imply the withdrawal of official proposals that had already been submitted. The document was incomplete, especially with regard to the provision concerning special zones and regional agreements. His delegation attached great importance to that subject and hoped that additional articles would be prepared. He hoped that the draft submitted would serve as a basis for discussion and that general agreement would be reached on the subject.

31. Mr. MANSFIELD (New Zealand) said that his country, as a sponsor of the draft articles on a zonal approach to the preservation of the marine environment did not consider that the articles established a final position. There were undoubtedly omissions and imperfections which were, in part, a reflection of the fact that the sponsors were drawn from different regions and groupings and also of the fact that they had been working against time. Nevertheless, his delegation believed that the paper constituted a positive contribution to the negotiations which would have to be carried out if a final agreement was to emerge on the issues bearing on marine pollution.

32. Referring to the points to which his delegation attached particular importance, he drew attention first of all to the establishment of a global approach to the protection of the marine environment. In its general statement on item 12 at the 4th meeting, his delegation had already reiterated the need for an "umbrella" treaty dealing with all aspects of pollution of the seas. That approach, which had found general acceptance, was carried forward in the draft articles. In article 1, the fundamental general obligation of States to protect and preserve the marine environment was stated. Then, there was the more specific obligation to take the measures necessary to prevent pollution of the marine environment from all possible sources. The broadness of that obligation and its consequent importance were indicated in article 3. The need for that broad approach, to encompass pollution from sources as different as sea-bed drilling, sewage, oil discharges, radio-active releases, and factory and car exhausts was obvious when it was realized that by far the greatest amount of pollution finding its way into the sea did not originate in activities carried out on or under the sea itself. Coupled with the obligation to prevent pollution of the marine environment, as set forth in article 3, there was the other equally important obligation on States to ensure that activities under their jurisdiction or control did not cause damage outside their own areas of jurisdiction, whether to other States or their environment or to the areas of the marine environment not under the jurisdiction of any State. Of course, the obligation not to cause damage to other environments

encompassed a duty to avoid deliberate acts which constituted a hazard to those other environments.

33. The second important element in the draft articles was the provision in article 6 that within the economic zone the coastal State had certain rights and duties in respect of the preservation of the marine environment. It should have an over-all management responsibility for the economic zone, and consequently its jurisdiction in respect of the resources must go hand in hand with jurisdiction in respect of the preservation of the marine environment which supported those resources.

34. Article 7 established the coastal State's power to enact laws and regulations applicable to the zone which should take into account international standards or be adjusted to conform to them, where applicable. However, where international standards were either not in existence or were inadequate, coastal States might adopt reasonable, non-discriminatory laws and regulations additional to or more stringent than the internationally agreed rules and standards. In respect of ship design and construction standards, the residual power could only be used where those higher standards were made essential by exceptional hazards to navigation or the special vulnerability of the marine environment. That residual power of the coastal State was carefully circumscribed in the draft articles, which should therefore meet the concern of those who feared that such powers might give rise to the emergence of conflicting standards, while at the same time it should protect the essential interests of the coastal States in the preservation of their marine environment. In any case, his delegation was ready to discuss additional safeguards in respect of the exercise of such residual powers.

35. He drew attention to the note at the end of the document to the effect that further articles would be needed, including provisions for the peaceful settlement of disputes. The New Zealand delegation attached considerable importance to the elaboration of a provision under which the exercise by the coastal State of the residual power provided for in article 7 could be subject to review.

36. Mr. SANDERS (Guyana) thought that specific mention should be made of measures designed to prevent or minimize the release of noxious or harmful substances from structures such as aerodromes, cities and recreational sites within the marine environment. In that connexion, he referred to reports that mobile floating airports were technically feasible and that floating sea-cities had already been proposed. "Underwater tourism" had already been developed. There was, therefore, a need to provide for the prevention of pollution from such sources.

37. Mr. NIKOI (Ghana) said that his delegation, which was a sponsor of the draft articles in question, associated itself with the views expressed by the representative of India when introducing them. The articles expressed the zonal approach to the solution of the problem of preserving the marine environment and his delegation, which supported the economic zone concept, considered that the coastal State, as a consequence of its jurisdiction over the economic zone, had the obligation to preserve the marine environment and to take adequate steps, commensurate with its capabilities and resources, to control and prevent pollution. Those measures were necessary to preserve the resources of the zone, particularly the living resources. While his delegation did not dispute the need to agree on international standards in that respect, they should not prejudice the sovereign rights of States to determine their own national standards.

38. Mr. LEGAULT (Canada) said that the draft articles of which his delegation was also a sponsor, attempted to set out the basic elements of an approach to the problems of marine pollution that was both zonal and functional; zonal in that it was founded on the concept of the economic zone or patrimonial sea, and functional in that it recognized that environmental management was inseparable from resource manage-

ment and that the marine environment could be effectively protected only by global, regional and national measures.

39. Although the draft articles did not represent a complete convention, he hoped that they at least made clear the nature and extent of the coastal State's jurisdiction in respect of marine pollution within the economic zone and would facilitate analysis of the question.

40. The nine draft articles were based to a great extent on the work of the marine pollution working groups of Sub-Committee III of the sea-bed Committee. They laid down the obligation of States to protect and preserve the marine environment; to co-operate to that end on a global and regional basis; to adopt measures for the prevention of pollution from all sources; and not to cause damage to areas beyond their national jurisdiction, including damage to other States and their environment, by pollution of the marine environment. The sponsors hoped that in all those respects, the draft articles represented the emerging consensus of the Conference.

41. He hoped that the draft articles would help to solve two important problems: first, the consideration to be given to the developing countries in devising measures for the prevention and control of marine pollution and, secondly, the rights and obligations of coastal States in respect of ship-generated pollution within the economic zone or patrimonial sea.

42. With regard to the first problem, draft articles 2, paragraph 1, and 3, paragraph 2, and 5, attempted to strike the proper balance between the need for strong, effective measures of environmental preservation and the need to keep those measures within the limits of the capabilities of the developing countries. If the convention were to be ratified and implemented by the developing countries, there must be a realistic approach to that question. While all countries had the same environmental duties, all had not the same ability to discharge them. It should also be remembered that the developing countries were not the greatest polluters of the marine environment.

43. With respect to the problem of ship-generated pollution, draft article 7 tried to reconcile the legitimate concern of all States to maintain international commerce and communication by sea and the equally legitimate concern of coastal States to protect their environment. Consequently, it required that the laws and regulations of coastal States regarding that type of pollution should conform to internationally agreed rules and standards. It also recognized the right of coastal States to adopt stricter national rules and standards where no international standards existed or where they were inadequate, and distinguished between the coastal State's right to adopt ship-discharge standards, for instance, and its right to adopt ship design and construction standards in strictly defined circumstances where hazards to navigation were exceptionally great or the environment especially vulnerable. Finally, it introduced additional safeguards by providing for the submission of national rules and standards to the competent international organizations, with the object, so far as his delegation was concerned, of having such standards put on an international basis if possible. Thus draft article 7, together with draft articles 8 and 9, tried to meet the fears that the rights of coastal States in respect to ship-generated pollution would lead to distinct, contradictory standards that would make international shipping virtually impossible. His delegation was prepared to work with other delegations to elaborate that approach further and to develop further safeguards.

44. In conclusion, he emphasized the note at the end of the document to the effect that further articles would be needed concerning certain subjects. His delegation would like to add to that list the question of sovereign immunity and the matter just raised by the representative of Guyana.

45. Mr. BAKULA (Peru) said that the zonal approach of the draft articles had the merit of bringing the Committee nearer to attaining its aims. The problem of pollution was not purely technical and should be considered in the true context of inter-

national relations and prevailing economic and social structures. From that point of view, it could be seen that the problem of the preservation of the environment and that of sharing the wealth resulting from the capitalist system and in particular colonialism—with its two extremes of an affluent, consumer society for some and poverty for others—constituted a single problem which should be understood and treated in the same way. In that context, the zonal approach came close to being the effective way of dealing with pollution questions.

46. He then commented in detail on the draft articles on the basis of document A/AC.138/SC.III/L.47 and Corr.1, submitted at Geneva by his and other Latin American delegations.

47. First, draft article 2 should take account of paragraphs 10, 11, 12 and 13 of the Latin American document, which were more specific with regard to international co-operation, concerning both the limit within which the coastal State exercised sovereignty and jurisdiction and the so-called high seas, which should henceforth be called the international sea. Secondly, in draft article 3, paragraph 2, the formula for the activities subject to jurisdiction or control did not cover the rights of sovereignty or jurisdiction proclaimed and exercised by many countries. In that connexion, it should be more clearly stipulated that the measures adopted by the coastal State to protect and preserve the marine environment from pollution should not transfer the effects of that pollution from one area to another. Thirdly, that article, which mentioned various sources of pollution of the marine environment, should specifically include a sentence concerning nuclear experiments and explosions, which affected marine fauna and even endangered human life. The reference to the discharge of noxious and harmful substances was inadequate. Fourthly, draft article 5 referred to the sovereign rights of coastal States, an expression which should be used in the other articles also. Fifthly, draft articles 6 and 7 contained fundamental aspects of the zonal approach which were not identical with his delegation's position. He would therefore suggest certain amendments to the sponsors of document A/CONF.62/C.3/L.6, after consultation with the other sponsors of document A/AC.138/SC.III/L.47 and Corr.1. Lastly, with regard to article 9, which referred to freedom of navigation and overflight within the zone, his delegation reminded the Committee that the Second Committee was studying other concepts which it considered more appropriate; it therefore seemed advisable to postpone any decision on the matter.

48. The Secretariat's report on problems of acquisition and transfer of marine technology (A/CONF.62/C.3/L.3) should be studied with the utmost attention. Paragraph 60 stated that initiatives had yet to be taken regarding marine activities which would fill important gaps in the dissemination of knowledge and application of marine technology. His delegation therefore requested the Secretariat to ensure that the Ocean Economics and Technology office of the United Nations continued to prepare its technical studies, which made an important contribution to the transfer of technology.

49. Mr. RASHID (Bangladesh) noted with satisfaction that the sponsors of document A/CONF.62/C.3/L.6 had endeavoured to introduce a zonal approach in dealing with the preservation of the marine environment, an approach his delegation fully supported.

50. His delegation assumed that the obligation stated in article 1, to protect and to preserve the marine environment, referred to national jurisdiction, since the problem could arise within or outside national jurisdiction; it was necessary, therefore, to ensure co-ordination between both jurisdictions. A further consideration was the need to include some basic definitions concerning pollution.

51. With respect to article 2, paragraph 2, he believed that it should be so drafted as to impose a strict obligation upon States.

52. Article 3, paragraph 2, should include the activities that caused damage. Furthermore, the term "measures" and the expression "the best practical means in accordance with their capabilities" in paragraph 1 of article 3 required clarification, since the measures could include legislative and legal measures, and the practical means could include scientific, technical and economic means.

53. Articles 6 to 9 dealt with matters related to the economic zone and had been referred to the Second Committee for consideration. To deal with them would merely be a duplication of effort.

54. Mr. BUHL (Denmark) said that article 7, paragraph 3 (b) (i) of the document, set forth the principle that in respect of ship-generated pollution the laws and regulations of the coastal State should conform to international agreed rules and standards. However, paragraph 3 (b) (ii) seriously weakened that basic principle since it authorized unilateral promulgation of laws and regulations, something which should be avoided at all costs. His delegation considered that one of the basic objectives of the Conference was to strengthen common endeavours to combat marine pollution while at the same time avoiding unnecessary interference with legitimate uses of the sea, such as shipping.

55. A number of international organizations had been actively engaged for several years in developing standards governing the design, construction, equipment and manning of ships, and Denmark had full confidence in the effectiveness of those organizations, particularly the Inter-Governmental Maritime Consultative Organization (IMCO).

56. The previous week, the Swedish delegation had submitted a draft on the promulgation of more stringent standards to prevent vessel-source pollution within special areas. Those rules would apply to the construction, design, equipment and manning of ships but would not enter into force until they had been approved by the competent international organization.

57. The Danish delegation considered that it was essential to maintain international standards in these specific fields, since otherwise contradictory standards might be promulgated, to the detriment of all countries. He agreed with the basic considerations in document A/CONF.62/C.3/L.6 and supported the informal proposal by Sweden.

58. Mr. MOLTENI (Argentina) said that his delegation supported the zonal approach adopted in document A/CONF.62/C.3/L.6, since the coastal State possessed competence and jurisdiction to prevent the deterioration of the marine environment within the 200-mile zone, and since any regulations on ship-generated pollution should strike a reasonable balance between all interests, namely those concerning protection of the environment and those concerning shipping.

59. Experience had shown that the systems hitherto adopted by the international community to protect and preserve the marine environment had proved inadequate, and that the only effective means of ensuring implementation of international standards was to give the coastal State powers to that effect, since that State had a vested interest in ensuring that no damage would be caused in the maritime space facing its coast.

60. On the question of pollution from vessels, he said that the flag State had traditionally been given primary responsibility for the application of those standards, but not all States had shown the same diligence in enforcing them. That was why the alternative solution had been proposed of giving the coastal State powers to enforce international standards within the 200-mile zone adjacent to its territory, regardless of the flag State.

61. Obviously such a system would not prove fully effective unless the international community ensured that the largest possible number of States participated in the elaboration of the relevant standards and that all interests were represented.

62. The Argentine delegation considered that the coastal State should adapt its laws and regulations to any agreed international standards, and also that its national standards should be reasonable and non-discriminatory.

63. He further considered that if the coastal State adopted standards additional to those internationally agreed, some States might impose arbitrary or discriminatory restrictions on the access of ships of developing States to its sea-coast, thereby controlling and regulating international maritime traffic to the detriment of those countries whose economic situation precluded renovation and modernizing of their merchant fleets.

64. Consequently, he could not approve of the existing wording in article 7, paragraph 3 (b) (ii), of document A/CONF.62/C.3/L.6, which provided for the possibility, in certain circumstances, of adopting laws and regulations additional to and more stringent than the internationally agreed rules and standards. The preservation of the marine environment should be an international concern, and the text did not provide sufficient safeguards in that respect, since it did not spell out the special circumstances mentioned in the text of that article. The Argentine delegation was prepared to co-operate in solving that problem.

65. Mr. MBOTE (Kenya) said that his delegation had always supported the concept of an economic zone and therefore supported document A/CONF.62/C.3/L.6. Nevertheless, the document was incomplete and certain amendments were required to make it more generally acceptable. His delegation had submitted document A/AC.138/SC.III/L.41 to the sea-bed Committee, which stated in article I, that all States had the right to establish a marine pollution control zone within which they would exercise jurisdiction to control activities for the purposes of preventing or minimizing damage to the marine environment. Prevention of pollution was part of the management of marine resources.

66. The draft articles in document A/CONF.62/C.3/L.6 followed that approach and were therefore supported by Kenya.

67. Mr. PERRAKIS (Greece) said that article 7, paragraph 3, (b) (ii) gave ground for concern, as it sought to combine two concepts which in his opinion were not necessarily compatible. There was a contradiction between that provision and article 2 of the document: while it was provided, in article 2, that States should co-operate on a global basis and, as appropriate, on a regional basis, to formulate and elaborate treaties, rules and standards, it should not be left to the judgement of individual States to determine such rules or provisions as suggested in article 7, paragraph 3 (b) (iii). Further, the approach should vary depending on the existence or non-existence of international rules. In the latter case, i.e. if the coastal State had no rules on pollution to guide it at the international level, it would decide what rules it considered appropriate to protect its marine environment and would try not to interfere unduly with traditional maritime usages. On the other hand, if relevant international rules did exist, it was not for the coastal State to decide whether they were or were not adequate, as that would mean introducing an element of arbitrariness and uncertainty, which would hinder the necessary uniformity, without prejudice to that State's right to approach the appropriate organizations and state its reasons for believing that those rules were not adequate.

68. Mr. MANANSALA (Philippines) said that the statements of previous speakers with regard to the draft articles made it unnecessary for him to speak on the item. The document set forth the obligation of each State to protect the marine environment. He supported the draft articles and thought that they constituted an appropriate basis for consideration by the Committee.

69. Mr. DEMPSEY (Ireland) said that, generally speaking, he agreed with the delegation of New Zealand that coastal States should have the primary responsibility for preserving the

marine environment adjacent to their shores. He concurred with the delegation of Argentina that the coastal State being the one most affected by the problems connected with pollution of its waters also had the greatest interest in taking whatever steps were necessary. He therefore approved of the concept of a pollution zone within which the coastal state would establish and enforce standards and regulations. He welcomed the draft articles in so far as they reflected that concept and reserved the right to revert to the matter at a later stage.

70. Mr. JAIN (India) said that the comments by various representatives regarding the draft articles were extremely constructive.

71. The suggestion by the representative of Bangladesh that definitions should be included was very useful and perhaps the definitions given in the draft articles submitted by the delegations of Kenya (A/AC.138/SC.III/L.41) and Canada (A/AC.138/SC.III/L.28) in Sub-Committee III of the sea-bed Committee could be used.

72. As for the comments of the representative of Bangladesh on the scope of article 1, he explained that the obligation of States to protect and preserve the marine environment included not only areas under national jurisdiction, but also the marine environment outside national jurisdiction.

73. In regard to the suggestion made by the representative of Peru to use the words "rights of sovereignty" in article 3, he thought that the matter should remain in abeyance until the decisions of the Second Committee, which was studying the question of a patrimonial sea, were known.

74. The concept of "damage" in article 3, paragraph 2, referred to by the representative of Bangladesh, was the legal concept of damages and was bound up with the question of liability.

75. Concerning articles 6, 7 and 9, he did not agree with the representative of Bangladesh that they should be dealt with by the Second Committee. The Second Committee was examining the problem from another angle, and the Third Committee had to consider the whole question of the conservation of the marine environment from its own viewpoint. Moreover, those articles constituted the basis of the entire draft.

76. In regard to article 7, paragraph 3 (b), on ship-generated pollution, about which several delegations had expressed their concern, he thought that there should be uniform rules but that account should also be taken of the fact that there were special situations arising from geographical circumstances, intensity of traffic, etc. He pointed out that the draft provided for various safeguarding measures and required that any national laws and regulations to deal with the situations referred to should have a scientific foundation. Further, any special measures introduced should be brought to the notice of the appropriate international organizations.

77. Mr. LEGAULT (Canada) said he agreed with the remarks of the representative of India and, with regard to the legitimate concern expressed by the delegations of Denmark, Argentina and Greece, he explained that there was no intention of permitting a coastal State to introduce arbitrary or discriminatory rules.

The meeting rose at 1.20 p.m.

12th meeting

Monday, 5 August 1974, at 3.25 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Scientific research (*continued*)*

[*Agenda item 13*]

1. Mr. BOHTE (Yugoslavia), referring to the document (CRP/Sc.Res./24) which had just been distributed, asked why it had not been formally introduced at the informal meetings on scientific research. He would also like to know what had become of the proposal made by Peru and supported by Yugoslavia that the representative of the United Nations Conference on Trade and Development (UNCTAD) should be invited to make a statement to the Committee on the transfer of technology.

2. The CHAIRMAN said that the document to which the Yugoslav representative had referred was part of the second progress report of the Chairman of the informal meetings on scientific research, who happened to be the representative of the Federal Republic of Germany.

3. Mr. BREUER (Federal Republic of Germany), speaking on behalf of the participants in the informal meetings, agreed with the Yugoslav representative that the document had not been formally presented; its appearance had merely been announced by one delegation at the meeting held on 31 July; as it was to be distributed on 5 August, the sponsors had had no objection to its being mentioned in the progress report.

4. Mr. STEINER (Secretary of the Committee), replying to the Yugoslav representative's second question, said that when the proposal had been made, the UNCTAD representative had

already left Caracas. Another UNCTAD representative was to take part in the work of the Conference, but he had not yet arrived; in that connexion he pointed out that that representative might not be fully conversant with the question under discussion. In any event, the Secretariat would inform him of the Third Committee's invitation and he was sure that it would be accepted.

Preservation of the marine environment (*continued*)

[*Agenda item 12*]

5. Mr. HARAN (Israel) introduced document A/CONF.62/C.3/L.5. Article 1 was in line with a trend that was emerging in international law, namely, to make offences that might have serious consequences for the international community, such as hijacking of aircraft or other acts of illegal interference with civil aviation, considered crimes *jure gentium*. All States were under an obligation to punish such crimes by appropriate penalties and it was particularly appropriate that such an obligation should apply to offences against the marine environment. During the general debate his delegation had already pointed out the difficulty of proceeding rapidly and effectively against those who caused damage to the marine environment. Article 1 was designed to ensure prompt prosecution and punishment of such offences.

6. Article 2 aimed at facilitating and speeding up legal proceedings by providing that documentary evidence submitted by the competent authorities of one State would be admissible in the courts of another State. Those two articles were comple-

* Resumed from the 9th meeting.

mentary to those of Kenya (A/CONF.62/C.3/L.2) and Greece (A/CONF.62/C.3/L.4) as well as to the proposal of the Federal Republic of Germany (A/CONF.62/C.3/L.7), which he supported.

7. Miss AGUTA (Nigeria), introducing the draft articles contained in document A/CONF.62/C.3/L.8, said that the concept of the common heritage of mankind would be meaningless unless it was accompanied by the development and transfer of technology. There were four essential aspects to that concept: first, all men, living in both developed and developing countries and irrespective of their geographical situation, were heirs to the common heritage; secondly, the developing countries must have control of the exploration and exploitation of their own resources within their national jurisdiction; thirdly, those countries must be assisted to attain their economic independence; and fourthly, there must be a levelling up of world living standards.

8. Her delegation was happy to see that its proposals corresponded to the four aspects singled out by the Secretariat in document A/CONF.62/C.3/L.3, namely, development of technological capabilities of developing countries; sharing of knowledge and technology between developed and developing countries; training of personnel from developing countries; and transfer of technology to developing countries.

9. The problem of the development and transfer of technology which the Committee was considering was complex and delicate; it should therefore be approached with great care, but with realism. Her delegation had tried to formulate an approach whereby standards would be made uniform, gaps bridged and the acquisition of knowledge facilitated, information disseminated to all and benefits equitably shared.

10. Taking the draft articles one by one, she pointed out that article 1 aimed at ensuring an adequate and equitable transfer of technology, for to promote the concept of the common heritage of mankind there must be equal opportunity for all its heirs.

11. In article 2 her delegation had tried to map out methods by which that goal could be achieved, namely, by the establishment of regional and subregional centres responsible for training and education, advanced management studies and the prompt publication of results.

12. Article 3 made provision for the issue of exploration and exploitation licences and for the in-service training of the nationals of developing geographically disadvantaged countries; it also linked scientific research with development and the transfer of technology. Paragraph 2 of the same article would make available to every State the blueprints and patents of plant and machinery used in the exploration and exploitation of the international area. Paragraph 3 ensured that States which originated the blueprints and patents would not lose but gain by their contribution to mankind. Paragraph 4 took care of the needs of the developing countries in that sphere.

13. It was obvious that no regulations could be enforced without co-operation; that was why her delegation suggested in article 4 that all States should co-operate actively with the International Sea-Bed Authority in the achievement of the noble ideal of a common heritage.

14. If the level of living of the developing countries was raised and if the concept of the development and transfer of technology was promoted, the general living standards of the entire world would automatically rise.

15. Some delegations had already supported the draft articles she had introduced; her delegation hoped that they would command general support.

16. Mr. JAIN (India) said that the draft articles submitted by Nigeria were most interesting; however, he thought they should contain a reference to the principle of non-discrimination.

17. Mr. KIRTON (Jamaica) said that his delegation's approach to the question of the preservation of the marine envi-

ronment was guided by five basic considerations: the need clearly to define and delimit the jurisdictional competence within the various maritime zones; the need to establish objective scientific and technological criteria for the formulation of rules, standards and recommended practices; the necessity of bearing in mind the interaction between the physical, human and biological activities that were constantly taking place in those zones and their consequent implications for the formulation and implementation of rules, standards and recommended practices; the need to strike a proper balance between the integrity of the marine environment and other legitimate uses of ocean space; lastly, the need to recognize a new economic and social order in which the industrial and economic development of the developing countries was to be speeded up.

18. His delegation had considerable sympathy with the zonal approach, provided that in the maritime zones in which national jurisdiction extended beyond 12 miles, developing geographically disadvantaged countries such as Jamaica would have a right of access to the living resources. The competence to establish rules and standards and recommended practices would lie with the coastal States in the case of zones lying within their national jurisdiction, whereas the Authority managing the common heritage of mankind would be competent in the zone beyond national jurisdiction, subject to the powers of international organizations such as the United Nations Environment Programme (UNEP) and the Inter-Governmental Maritime Consultative Organization (IMCO) with regard to co-ordination and technical matters. In the exercise of that competence, the Authority should ensure that standards were formulated according to objective scientific and technological criteria, that particular emphasis would be placed on regional characteristics, and that the standards would be sufficiently high but not beyond the economic capacity of developing countries and would not prevent them from continuing their economic development programmes.

19. In that respect, a distinction made by the International Civil Aviation Organization (ICAO) regarding the régime applicable to the air might provide a pointer in the solution of the dilemma between standards and recommended practices. The standards would constitute the indispensable minimum for effective regulation and would be binding in character, whereas the recommended practices would constitute desirable objectives to be attained according to each country's capacity. That system would recognize the legitimate fears of the developing countries while at the same time respecting the need to develop science and technology; it would also recognize the moral obligation of the developed countries to take all possible measures to redress the balance of nature, which had been disturbed by centuries of pollution for which they were responsible.

20. If special competences within the various maritime zones were to be recognized, the existence of legitimate rights and uses by others in such zones must also be recognized. Accordingly, standards for the preservation of the marine environment should not be formulated in such a way as to interfere unduly with the legitimate exercise of such rights as innocent passage and freedom of navigation or of the rights of developing geographically disadvantaged States.

21. The Conference would have to determine the ways in which the obligations created by the new convention in relation to the preservation of the marine environment would be implemented; it would also have to determine the responsibilities and liabilities that would arise from failures to respect those obligations. His delegation considered that it would be the duty of States to incorporate in their domestic law any obligations arising under the future convention in matters falling within their jurisdiction. However, liability for any damage arising from failure to comply with those obligations must rest with the person committing the act. It would be quite intolerable to make the State liable simply because the act had been committed within its jurisdiction. In that connexion, the Jamai-

can delegation considered that the proposal in document A/CONF.62/C.3/L.6 placed undue emphasis on the obligations of States. That was particularly true of article 3, paragraph 2, which provided that "States shall take all necessary measures to ensure that activities under their jurisdiction or control do not cause damage to areas beyond their national jurisdiction . . .".

22. Most of the developing countries might well find themselves unable to take such measures in an extensive jurisdictional area. It seemed impractical, bearing in mind the right of freedom of navigation, to guarantee that all activities carried on in that zone would never cause damage outside the zone, and it would be unrealistic to expect States to accept liability for such damage. That was why it was necessary to distinguish clearly between the obligation of the State to prescribe standards, on the one hand, and the liability of the person who committed the act that caused the damage, on the other.

23. Jamaica was located in an area where a very great number of maritime activities were carried on and it was exposed to all the dangers of pollution. For that reason it was prepared to co-operate in finding effective and generally acceptable solutions.

24. Mr. BOTHA (South Africa) stressed that the problem of marine pollution, especially ship-based pollution, was of vital importance to his country. Indeed, South Africa was a country with one of the longest coastlines relative to its total land area. The major ocean currents flowing along the coasts of his country affected not only its own shores, but also the shores of countries very far afield, such as Australia, New Zealand, Madagascar, Mauritius, Brazil, Uruguay and Argentina. The danger of pollution along the southern coast of South Africa had been increased, on the one hand, as a result of the conclusion of the International Convention on Load Lines of 1966 and, on the other, because of most unfavourable sea conditions. The number of vessels rounding the tip of South Africa had increased greatly during the past 10 years: more than 60 per cent of the total volume of oil carried by sea passed close to the shores of South Africa. The risk of accidents—and some had already occurred—was therefore very great.

25. Land-based pollution was likewise causing serious concern, and the South African authorities were endeavouring to combat it; in contrast, they were unable to prevent or control ship-based pollution. Because of inadequate international arrangements, especially with regard to coastal State jurisdiction, South Africa had to spend large amounts of money on equipment and cleaning operations in order to minimize the effects of pollution caused by spillages or discharges.

26. The various proposals that had already been advanced placed the responsibility, broadly speaking, for combating ship-based marine pollution on the flag State, the port State and the coastal State. The South African delegation believed that internationally agreed standards and criteria were prerequisites for effectively controlling marine pollution on a worldwide basis. Only in cases of emergency should the coastal States be empowered to intervene.

27. The South African delegation would support any proposal granting suitable powers of enforcement to the flag State, the port State or both. It was, however, also necessary that the coastal States should be endowed with strong and effective powers of enforcement.

28. Mr. VELLA (Malta) said that his delegation approved, in its broad outlines, the report entitled "Problems of acquisition and transfer of marine technology" (A/CONF.62/C.3/L.3), which constituted a valuable source of information for the developing countries. It was obvious that the study could not be exhaustive because of the nature of the subject itself. Technology was never at a standstill, and it would perhaps be useful if the Secretariat would keep the study up to date.

29. Section E of part IV, which was entitled "Appropriate actions which may be taken by the United Nations", showed the

limitations of the study. It was to be noted that some of those measures would entail financial implications whereas others would not involve additional expenditure.

30. The delegation of Malta wished to associate itself with that of Peru in requesting the Secretariat to prepare a study, for use at the next session of the Conference, on the uses of ocean space mentioned in paragraph 60 of the report. It could be a short informative study, describing the various types of technology and use of ocean space, and the possibilities of transferring those types of technology. The uses of ocean space had important implications for the law of the sea in general, and a study by the Secretariat on that subject would be of great value to the Conference.

31. Mr. JAIN (India), replying to the comments of the Jamaican representative on Article 3, paragraph 2, of document A/CONF.62/C.3/L.6, said that Jamaica's concern was most understandable. Nevertheless, if the intention really was to prevent pollution of the marine environment, it would hardly be possible to restrict the scope of the measures envisaged. He wished to point out, however, that the word "damage" must not be interpreted to mean actual damage; the word should be understood in its legal sense. Thus, since what was at issue was a legal concept which covered the extent to which the law took damage into consideration, he did not think there would be any difficulty about its adoption.

32. Mr. BREUER (Federal Republic of Germany) said that, before introducing document A/CONF.62/C.3/L.7, he would like to make a few general observations. As it had already indicated when the general statements were being made, the delegation of the Federal Republic of Germany considered that the essential task of the Conference, as far as preservation of the marine environment was concerned, consisted in improving and further elaborating the international and regional conventions on ship-based pollution which had been concluded in earlier years. For that reason, the draft articles that his delegation was submitting dealt mainly with that aspect of pollution. The text concentrated on the enforcement of regulations in that respect and in particular on the crucial issue of ship inspection. The question of criminal jurisdiction, while closely related to the enforcement problem, posed quite different problems and hence should be dealt with separately. His delegation was ready to submit a draft article on that topic at a later stage.

33. The arguments of delegations which advocated the so-called "zonal approach" were not very convincing, either from the point of view of the protection of the marine environment or from that of the protection of coastal States' marine resources. The marine environment and its resources could only be effectively protected if the oceans were treated as an ecological unit. Pollution control zones could deal only with the problems caused by pollution incidents occurring within those zones. Ships at sea were a potential source of pollution everywhere and harmful substances discharged by them outside such zones could drift into those zones without the coastal State's being able to take enforcement measures against those ships. Furthermore, there were considerations of principle which argued against the establishment of environment protection zones to control vessel-source pollution on the high seas. The argument most frequently put forward in favour of the establishment of such zones was that coastal States were in general more vigilant than flag or port States in carrying out their responsibilities. If that were true, land-based pollution, for which coastal States were largely responsible, would not be the principal source of marine pollution. His country, as a coastal State as well as a flag and port State, rejected that assumption for the following reasons: international law regulated relations between States and as such was based on the principles of sovereign equality and non-discrimination. The new law of the sea must not therefore contain provisions which undermined those essential foundations. However, his delegation believed that States did not neglect their environmental responsibilities

intentionally, but because they did not possess the administrative and other means to carry out those obligations effectively. Flag States were not the only ones which faced those difficulties; the great majority of coastal States would find themselves in the same situation if they were to assume the responsibility for controlling such vast areas of the sea.

34. His delegation therefore preferred a system of pollution prevention measures based on international co-operation, thus avoiding the risks of dividing up large areas of the high seas into national pollution control zones.

35. In the draft articles in document A/CONF.62/C.3/L.7, his delegation had tried to elaborate the main elements of such a system. Since they conferred the various control functions in

each case on the State which seemed the most appropriate to exercise them effectively, the approach might be called "functional".

36. Since the draft articles were not yet available in all languages, he read out the various articles, drawing particular attention to article 4, which empowered a coastal State to board any ship suspected of having substantially polluted the high seas in the vicinity of its territorial sea and, after inspecting that ship, to send a report to the competent international organization and to the flag State.

37. He reserved the right to make a further statement concerning the draft articles he had just introduced.

The meeting rose at 4.35 p.m.

13th meeting

Friday, 9 August 1974, at 10.55 a.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Reports of the Chairmen of the informal meetings

1. Mr. VALLARTA (Mexico), speaking as Chairman of the informal meetings on item 12 (Preservation of the marine environment) said that at those meetings a method of work had been adopted that would enable delegations to continue working in an orderly manner. It had been decided to cover the following subjects: pollution from land-based sources; marine pollution from activities concerning exploration and exploitation of the sea-bed within the areas of national jurisdiction; marine pollution from activities concerning exploration and exploitation of the sea-bed beyond the areas of national jurisdiction; pollution from vessels (flag State, coastal State, port State); marine pollution from the atmosphere; pollution from dumping of wastes in the sea (flag State, coastal State, port State); and other sources of marine pollution.
2. It only remained to undertake the difficult task of drafting provisions on those and other topics in the small drafting and negotiating group.
3. Mr. METTERNICH (Federal Republic of Germany), speaking in his capacity as Chairman of the informal meetings on items 13 and 14 (Scientific research and Development and transfer of technology), said that the consultation and negotiation group set up at the informal meetings had worked out texts for two articles, and three paragraphs of a third article. Negotiations would continue on a further paragraph of that article.
4. As soon as a consolidated position was reached among delegations concerning rules of conduct for marine scientific research and consent, and participation and obligations of coastal States, the consultation and negotiation group would start working out texts on those items, which would then be submitted to the Committee, meeting informally.
5. It was hoped that the consultation and negotiation group would that day end its task of drafting an agreed text on general conditions for the conduct and promotion of marine scientific research. There would then be an informal meeting for a first reading of the third item of the informal comparative table (CRP/Sc.Res./I).
6. If there was time, the informal meeting could then begin its first reading of the fourth and fifth items and then go on to discuss a number of drafts introduced in Sub-Committee III of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction in 1973.

Scientific research (continued)

[Agenda item 13]

7. Mr. APPLETON (Trinidad and Tobago) introduced document A/CONF.62/C.3/L.9, containing draft articles on marine scientific research.
8. Reviewing the articles, he said that since in article 1 it was very difficult to make a clear distinction between pure scientific research and industrial or other research, a considerable degree of control would be needed.
9. With respect to subparagraph (c) of article 4, he recalled the extreme position adopted by certain delegations at the seabed Committee that the results of scientific research should be the property of the coastal State. His delegation was now proposing that the originals should remain the property of the coastal State only where specimens could not be duplicated. Under subparagraph (d), his delegation now wished to add the words "and not being unnecessarily withheld" at the end.
10. Mr. YTURRIAGA BARBERAN (Spain) pointed out a discrepancy between the wording of articles 2 and 4. The former read "Marine scientific research in the territorial sea shall only be conducted with the prior approval of the coastal State . . ."; article 4, however, read: "Marine scientific research in the exclusive economic zone/patrimonial sea and on the continental shelf shall be conducted only with the prior authorization of the coastal State . . .".
11. Mr. JAIN (India) endorsed that view. It would be better to use the word "authorization" in both places.
12. With respect to article 5, he pointed out that it was not clear whether the International Authority would have authority over the water column. He therefore wondered whether it would be possible to add, after the words "be conducted", the words "in conformity with its competence".
13. Mr. RAMADAN (Egypt) said that draft article 1 seemed to lack the proper scientific approach. The definition in CRP/Sc.Res./12, submitted by his delegation, might be more suitable.
14. Mr. BUSTANI (Brazil) asked whether there was a difference between "prior approval" and "prior authorization" in the view of the Trinidad and Tobago delegation. If there were no difference, he wondered why there were separate sections in the draft articles for the territorial sea and the economic zone.
15. Mr. HUSSAIN (Pakistan) said that his delegation was in agreement with the draft articles in A/CONF.62/C.3/L.9. It

fully agreed that no lines could be drawn between pure and other research and that all such research should be conducted for peaceful purposes.

16. He agreed with the Egyptian representative that article 1 did not constitute an adequate definition of marine scientific research.

17. Article 2 was in line with a document sponsored by his delegation at the sea-bed Committee (A/AC.138/SC.III/L.55), though it differed in that it used the words "prior approval" whereas his delegation's text had read "explicit consent". The new draft articles also distinguished between the territorial sea and the economic zone.

18. His delegation endorsed the ideas in articles 3, 4 and 5. With respect to article 5, his delegation had submitted a similar proposal (CRP/Sc.Res./8/Rev.1).

19. Mr. BOROVIKOV (Byelorussian Soviet Socialist Republic) said that his delegation had some problems with regard to the document as a whole.

20. With respect to article 5, it would be unrealistic to ignore the fact that no State would be ready to give the International Authority exclusive rights to marine scientific research, for the Authority would then carry out only such research as was of interest to it. Moreover he foresaw certain problems of financing.

21. Mr. MBOTE (Kenya) said that his delegation was generally in agreement with the draft articles but it, too, would like a clarification of the distinction between "prior approval" and "prior authorization".

22. Since the list of the rights of coastal States given in article 4 could not be exhaustive, it might be better to insert the term "*inter alia*" in the introductory paragraph; alternatively, the list might be omitted.

23. He understood that the question of the "international area", referred to in article 5, was still being debated in the First Committee. The Third Committee should not of course prejudge the outcome of that debate, but for the time being he could support the wording of the article.

24. Miss MARIANI (France), referring to article 1 (b), according to which it was impossible to make a distinction between pure scientific research and industrial or other research, said that what was involved was the absence of a definition, not a definition, and in her delegation's view a fundamental distinction should be made between open basic scientific research, carried out for the benefit of the community, without concern for profit, and industrial research.

25. The difference lay mainly in the possibility of immediate utilization of industrial research for economic purposes, while scientific research, which did not involve the same restraints on time and efficiency for the sake of specific results, yielded data which were accessible to all, were not of a secret nature, and were public property.

26. Her delegation could not now accept article 5 which prejudged the decisions to be taken elsewhere concerning the international zone. Her delegation thought that the sponsors had not reflected sufficiently on the financial implications of the article.

27. Mr. BOHTE (Yugoslavia) said that his delegation would also like to have clarification of the difference between "prior approval" and "prior authorization". It might be possible to link articles 2 and 4, using clearer terminology.

28. He agreed with the comments made by the representative of Kenya about the rights listed in article 4; the list might well be omitted.

29. He thought that the wording of article 5 should be the same as that used in the proposals which the Group of 77 had submitted to the First Committee, where the question of the international zone was still under consideration.

30. Mr. MOLTENI (Argentina) said that his delegation supported article 1 because there was no practical difference between pure and applied research. It, too, would like a clarification of the terms "prior approval" and "prior authorization". He agreed that the list of rights in article 4 was not exhaustive; moreover, the possibility that coastal States might impose other requirements should be left open. Article 5 must for the moment remain provisional, being dependent on the jurisdiction vested in the International Authority. On that understanding, his delegation could accept it.

31. Mr. SHUTTLEWORTH (South Africa) suggested that the words "or refusal" should be omitted from article 4, subparagraph (d), and that the second part of the subparagraph should read: "such consent being given within a reasonable time, and not being unreasonably withheld".

32. Mr. YTURRIAGA BARBERAN (Spain) said that the definition given in article 1 was acceptable but that it might be better to preface it with the words "for the purposes of this convention". His delegation agreed with the point made in subparagraph (c) but thought that it might be omitted.

33. With regard to the distinction between "prior approval" and "prior authorization", his delegation thought that the requirement for the territorial sea should be different from that for the economic zone.

34. He noted that there was no intention to give an exhaustive list in article 4, since the article referred to "minimum requirements". He agreed that article 5 gave rise to problems and that the Committee should not prejudge the decisions of the First Committee. However, he could not agree that the question of the international zone concerned only the First Committee. There were two main aspects: the régime governing scientific research beyond the limits of national jurisdiction; and the conduct of such research. While the régime fell within the competence of the First Committee, the question of the conduct of scientific research fell within the competence of the Third. There might be a need for a joint meeting of the two Committees.

35. Mr. DAHAK (Morocco) said that the definition given in article 1 was not complete. He noted that the term "marine environment" had itself not yet been defined. The definition of marine scientific research could be accepted provided that the marine environment was not understood to include the air space above the sea.

36. Article 1, subparagraph (c) might be improved by replacing the words "by means not harmful" by the words "by means not prejudicial", since harmful effects might not be apparent at the time the research was being conducted.

37. Mr. BUSTANI (Brazil) asked the representative of Spain whether the distinction he had made between "prior approval" and "prior authorization" meant that he wanted to have different jurisdictions for the territorial sea and the continental shelf.

38. Mr. McCOMIE (Barbados), speaking on a point of order, said that he had understood that, when a proposal had been introduced by its sponsor, delegations might then seek clarification but should not enter into substantive issues. The current debate clearly dealt with substance and amendments had even been submitted.

39. The CHAIRMAN agreed with the point made by the representative of Barbados: substantive matters should first be discussed in informal meetings. He appealed to delegations to conform to that arrangement.

40. Mr. HUSSAIN (Pakistan) said that he wished to make his delegation's position on article 3 clear: the aim was to include the concept of national jurisdiction; therefore, the words "or areas of national jurisdiction" should be inserted after the words "territorial sea".

41. Mr. BERTELS (Netherlands), referring to article 4, said that the granting of prior authorization made sense only if it

was subject to specified maximum, rather than minimum, requirements.

42. Mr. APPLETON (Trinidad and Tobago), referring to the distinction between "prior approval" and "prior authorization", said that the intention was to provide a stronger régime for the territorial sea than for the economic zone. However, his delegation thought that the terms could be used interchangeably.

43. Subparagraph (b) of article 1 was not meant to be part of the definition of marine scientific research, which was given in subparagraph (a).

44. The territorial sea and the economic zone or patrimonial sea had been dealt with separately in articles 2 and 3 and in article 4 respectively, for the purposes of negotiation.

45. He agreed that the list of rights given in article 4 was not exhaustive but, as the representative of Spain had pointed out, the introductory paragraph did include the term "minimum requirements".

46. The representative of the Byelorussian SSR had said, with reference to article 5, that the International Authority should not have the exclusive right to control scientific research. In his delegation's view, the essential point was that the Authority should have the right to decide who should undertake the research, even if initially it lacked the means to do so itself. He agreed, however, that the Committee should not prejudge the issue. He accepted the suggestion made by the representative of India that some formula such as "in conformity with its competence" should be inserted after the words "shall be conducted" in the same paragraph.

47. If the South African proposal that the words "or refusal" should be omitted from article 4, subparagraph (d), were accepted, there would be no need to require the consent of the coastal State, since it would not have the right to refuse.

48. He noted that article 1, subparagraph (a), included the words "and experiments related thereto", which he thought covered the point made by the representative of Morocco concerning air space.

49. Mr. COLLINS (Liberia), introducing document A/CONF.62/C.3/L.10, said that the purpose of the amendment proposed in paragraph 2 of that document was to ensure that port States adopted the national legislation required for the enforcement action referred to in article 8 of document A/CONF.62/C.3/L.4.

50. His delegation could not accept document A/CONF.62/C.3/L.4 as it stood, but could accept it with the amendments proposed in the document he was introducing.

51. Mr. PERRAKIS (Greece) said that he found the amendments proposed in document A/CONF.62/C.3/L.10 quite acceptable. In fact, they clarified and improved upon document A/CONF.62/C.3/L.4.

52. Mr. BREUER (Federal Republic of Germany) said that he wished to clarify certain aspects of document A/CONF.62/C.3/L.7 which he had not had time to explain in his statement at the preceding meeting of the Committee.

53. That document tried to serve two fundamental interests: the protection of the marine environment of coasts, and the free flow of shipping. The latter interest was of the highest importance for developing countries which were entering the area of sea trade with new ships flying their own flags. Those States were concerned that coastal States should not apply standards stricter than those laid down by international law concerning the construction, design, equipment, maintenance and operation of vessels. Document A/CONF.62/C.3/L.7 had been prepared with that interest in mind.

54. According to scientists, the most hazardous long-term effects on the marine environment resulted not from major pollution incidents but from chronic pollution caused by continuously escaping small quantities of oil and other harmful

substances. To remedy that problem, article 1, paragraph 1, of his delegation's proposal imposed on flag States the obligation to deny to ships which did not comply with the requirements of the Inter-Governmental Maritime Consultative Organization (IMCO) or stricter flag-State anti-pollution requirements the right to fly their flag, and to issue certificates for ships complying with those requirements.

55. To facilitate inspection measures, article 1, paragraph 2, provided that those certificates would have the same validity with respect to the authorities of other States as if those States had issued them. That should be acceptable if at the same time, as provided in article 1, paragraph 3, the flag State was held responsible for marine pollution incidents caused by ships to which it had issued certificates that incorrectly attested to compliance with anti-pollution requirements. However, he wished to emphasize that that last provision was not intended to detract from the primary liability of ship-owners in respect of pollution damage.

56. Still more important were the provisions designed to ensure that flag States complied with their obligations. His delegation's proposal provided, first, for the participation of port and coastal States in the enforcement measures implemented by flag States with a view to supporting and controlling flag States in that regard. For that purpose, article 2, paragraph 1, made provision for the inspection of certificates of ships in certain areas by port and coastal State authorities, and even for inspection of the ships themselves under some circumstances.

57. A second category of measures was designed to put pressure on flag States to carry out their obligations. To that end, article 3, paragraph 1, entitled port States to deny entry to their ports or off-shore terminals to ships not carrying valid certificates, and entitled coastal States to deny such ships passage through their territorial sea. However, his delegation did not think it necessary to give coastal States the right to inspect ships in innocent passage through their territorial sea, as their rights in that area were adequately protected by the presumption contained in the second sentence of article 3, paragraph 1, which allowed them to order ships to leave the territorial sea. That was a considerable step towards ensuring that ships complied with environmental requirements, for it meant that ships not carrying the required certificates could not fully engage in commercial activities since they could not be sure of unloading their cargoes.

58. The question of free passage through international straits which formed part of a territorial sea was still unresolved at the Conference. His delegation's current view was that the right to deny foreign ships passage through the territorial sea would not apply to such areas.

59. The articles concerning violations of discharge regulations were also based on co-operation and mutual control by flag, port and coastal States. They set up a system of inspection measures ensuring effective and adequate investigation of all types of violations. Article 2, paragraph 2, envisaged that the inspection of ships should normally be carried out in ports, off-shore terminals or internal waters. If that inspection indicated that discharge regulations had been violated on the high seas, a report, pursuant to paragraph 3 of the same article, would be forwarded to the flag State and to the competent international organization which, in his delegation's opinion, should be the Inter-Governmental Maritime Consultative Organization. However, if a ship had violated discharge regulations in the territorial waters or internal waters of the inspecting State, paragraph 3 provided that that State could institute proceedings against the ship under its national law. Article 3, paragraph 2, complemented those inspection rights of port States by establishing similar rights for coastal States, under the circumstances specified in that paragraph, with respect to ships passing through their territorial sea.

60. In cases of substantial pollution on the high seas in the vicinity of the territorial seas of coastal States, coastal State inspection powers should be supplemented, as provided in article 4, paragraph 1, by conferring on those States the right to inspect a ship found near the site of the pollution incident, if there were reasonable grounds for believing that it had violated discharge regulations. That provision was the core of his proposal. Although the provision was limited to pollution incidents, his delegation believed that it gave coastal States more protection against vessel-source pollution adjacent to their territorial seas than would pollution control zones, since under his delegation's approach, ships would be subject to inspection not only within such zones but everywhere on the high seas in the vicinity of the territorial seas of coastal States. That would have the advantage of greater flexibility and effectiveness. Regional or bilateral arrangements for the establishment and implementation of co-operative inspection procedures could further increase the effectiveness of that new right of coastal States.

61. Inspection of ships for violations of discharge regulations would, in the high seas, normally be carried out through co-operation between flag and port States. However, if such viola-

tions resulted in substantial pollution of the marine environment of the high seas in the vicinity of the territorial sea of coastal States, i.e. if coastal States were confronted with a real danger to their coastlines and marine resources, his delegation's approach also provided for on-the-spot detection by coastal States. That had the advantage of ensuring not only effective investigation and punishment of violations of discharge regulations but also recognition of the right of coastal States and their nationals to compensation for damage resulting from pollution incidents.

62. His delegation realized that those provisions and the other enforcement rights contained in its proposal could entail a certain risk of unjustified interference with international navigation. Article 5 of the proposal therefore provided some safeguards designed to minimize those risks as far as possible. Most of those safeguards had already been incorporated in international conventions and required no explanation. He wished merely to point out that his delegation attached great importance to the elaboration and implementation of regulations which, as stated in article 5, paragraph 1, would render unnecessary the stoppage or boarding of ships en route.

The meeting rose at 1 p.m.

14th meeting

Friday, 9 August 1974, at 3.35 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Preservation of the marine environment (*continued*)*

[Agenda item 12]

1. Mr. ODA (Japan) said that in 1973 his delegation had presented a proposal (A/AC.138/SC.III/L.49) to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction based on what might be called the "zonal approach". His country had always considered it a fundamental policy to harmonize the two interests of the international community—preservation of the marine environment and promotion of the free flow of maritime traffic—both of which were undoubtedly beneficial to all nations, whether developed or developing, maritime or land-locked.

2. It was important that all ships sailing on the sea should comply with design and construction standards that were adequate to prevent marine pollution. Such international regulations must be established through competent international organizations such as the Inter-Governmental Maritime Consultative Organization (IMCO). Moreover, uniform, universally accepted standards for regulating the discharge of pollutants from vessels were essential to ensure the preservation of the marine environment without hindering the smooth flow of maritime traffic. It was possible that States in certain ecologically or biologically vulnerable areas might conclude regional agreements with more stringent standards for regulating the discharge of harmful pollutants. Such standards, once accepted by the competent international organizations, should be observed by all ships.

3. In short, his delegation opposed the contention that each coastal State might impose on foreign vessels sailing off their coasts national standards with respect to construction, equipment, manning or discharge of pollutants from vessels.

4. In order to ensure compliance with international standards, it was necessary to provide adequate means for enforcement. In that connexion the following problems arose.

5. First, it must be borne in mind that the jurisdiction of the flag State had served as a basic principle supporting the legal system of the sea. Under that principle, the flag State had the right and the obligation to ensure that ships flying its flag complied with any rules of international law. Article 5 of the 1958 Convention on the High Seas¹ provided that "the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag". His delegation saw no need to abrogate that principle, which should continue as a basic rule for controlling navigation, since without such a rule there would be chaos. His delegation would support proposals based on that principle, such as article 4 of the Greek proposal (A/CONF.62/C.3/L.4) and article 1, paragraph 1, of the proposal presented by the Federal Republic of Germany (A/CONF.62/C.3/L.7).

6. Secondly, regarding design and construction standards, which must be uniform and internationally accepted, the flag State should have the right and obligation to enforce such standards. The coastal State should not have jurisdiction with respect to design and construction standards, for the following reasons: first, the flag State was in a better position to exercise effective control in that regard; secondly, violation of construction and design standards was difficult to recognize from a distance and it was not unlikely that once coastal States were granted the right to enforce those standards they might abuse it. On the other hand, when ships were in port, the port State should be given the power to inspect them and even prosecute and punish them if violation of international construction and design standards was verified. Inspection of ships to ascertain whether such standards were being complied with could best be effected in port, without causing any impediment to the sailing of the vessel. Although his delegation was suggesting a zonal approach it did not intend that approach to apply to the enforcement of standards in respect of the construction, equipment or manning of vessels.

*Resumed from the 12th meeting.

¹ United Nations, *Treaty Series*, vol. 450, p. 82.

7. With respect to competence to enforce compliance by vessels with internationally accepted discharge standards, the flag State was not always in the best position to apply international rules and regulations to its vessels sailing throughout the world. In many cases, it was not the nation to which the vessel officially belonged that suffered most seriously from pollution. A supplementary method must be worked out in order to ensure effective enforcement of discharge standards. Various proposals had been put forward in that regard: some favoured a coastal State zonal approach, while others supported port State jurisdiction. His own delegation subscribed to the coastal State zonal approach as proposed in its document submitted to the sea-bed Committee. The effectiveness of port State jurisdiction in preventing pollution from operational discharge of pollutants from vessels was limited. The port State would face the same difficulty as the flag State when it investigated or prosecuted a ship found in its ports with respect to unlawful discharge in the territorial waters of other distant States. It should be the coastal State that exercised jurisdiction in that regard, for it was the coastal State that would directly suffer from the damage caused, and, in addition, it had a special interest in taking the necessary measures to protect the marine environment off its coasts. His delegation viewed coastal jurisdiction not only in terms of rights but also in terms of the obligation to preserve the marine environment. In establishing a pollution control zone, primary consideration should be given to the capability of the coastal State to fulfil its obligation to guard against the offence of illegal discharge and to take administrative or judicial actions when necessary.

8. When his delegation had submitted its proposal to the sea-bed Committee the year before, it had left blank the breadth of the zone, since to claim jurisdiction over a wide zone in which it would be practically impossible to exercise control would not solve the problem. His delegation had in mind a reasonable breadth, such as 50 nautical miles measured from the coast. That suggestion was not a definite one, but it corresponded to the breadth of the coastal area in which oil discharge was prohibited under the 1973 International Convention for the Prevention of Pollution from Ships. The régime of that zone should not be identified with the régime of the economic zone.

9. His country was also concerned about the danger of coastal States abusing their rights. The coastal State had the right to stop and investigate a vessel in that zone only when there was sufficient reason to believe that a contravention of internationally accepted discharge standards had occurred. Furthermore, there must be sufficient evidence available to institute judicial proceedings, which must be fair and non-discriminatory. In that connexion his delegation was in agreement with article 9, paragraph 1, of the Greek proposal (A/CONF.62/C.3/L.4) and article 5, paragraph 1, of the proposal of the Federal Republic of Germany (A/CONF.62/C.3/L.7). Once taken to a port of the coastal State, a vessel should not be detained longer than was essential for purposes of investigation and it should be promptly released if the investigation did not reveal a violation of the applicable standards.

10. Finally, he stressed that whether it was the coastal State jurisdiction or the port State jurisdiction which was finally recognized as supplementary to the flag State jurisdiction, there would be no assurance that the current serious problems of marine pollution would be eliminated if all States did not firmly decide to co-operate in attaining that highly important objective.

11. Mr. AHMED (United Nations Environment Programme) said that he hoped that the recommendations on protection of the marine environment made by Mr. Maurice Strong, the Executive Director of UNEP, in his statement at the 31st plenary meeting would be helpful to representatives. He requested the Secretariat of the Committee to make the recommendations available to them.

12. He described the functions and responsibilities of UNEP as set forth in General Assembly resolution 2997 (XXVII), part I, paragraph 2. The purpose of those functions and responsibilities was to add a new dimension to international environmental co-operation by providing States with a new forum devoted exclusively to the protection and preservation of the human environment and a focal point for international environmental action and co-ordination of activities within and outside the United Nations system. UNEP, therefore, was not a supra-national regulatory agency that sought to impose policies, rules or regulations on sovereign States or to pre-empt the sectoral responsibilities of international organizations active in the field of the environment. Its sole purpose was to establish the framework for an over-all system which would provide sovereign States with the means of reviewing and directing all activities that might affect the human environment, with a view to identifying gaps and recommending ways and means of filling them in accordance with a well-defined set of common policies and goals.

13. With respect to existing or newly-created international organizations, UNEP made no claim to a monopoly of environmental action nor did it intend to take over the manifold activities pursued by a variety of intergovernmental and non-governmental organizations. However, the primary responsibilities of many of those organizations would not be environmental and might on occasion conflict with environmental interests. On such occasions, it would be the responsibility of UNEP to make sure that those whose primary mission lay elsewhere took full account of the environmental problems they created and that their activities were carried out in accordance with the over-all environmental objectives and priorities established by the common will of States. Even where there was no conflict of functions, co-ordination was essential for proper environmental management. It was for that purpose that General Assembly resolution 2997 (XXVII) in its part IV had established the Environment Co-ordination Board, composed of high-ranking representatives of all organizations within the United Nations system, to meet periodically to review and co-ordinate their environmental activities and programmes.

14. With regard to the financial arrangements of UNEP, that resolution had established a voluntary fund in order to enable the Governing Council of UNEP to fulfil its policy-guidance role and to finance wholly or partly the costs of the new environmental initiatives undertaken within the United Nations system. The various environmental uses to which the fund should be put were set forth in part III, paragraph 3, of the resolution.

15. The protection and preservation of the marine environment were of particular concern to UNEP. At its first session, held in June 1973, the Governing Council had requested the Executive Director to undertake, *inter alia*, the following tasks: to carry out objective assessments of problems affecting the marine environment and its living resources in specific bodies of water; to assist nations in identifying and controlling land-based sources of pollution, particularly those which reached the oceans through rivers; to promote the conclusion of international and regional agreements for the control of all forms of pollution of the marine environment, especially agreements relating to particular bodies of water; to urge IMCO to set a time-limit for the complete prohibition of intentional oil discharge in the seas, and to seek measures to minimize the probability of accidental discharges; to develop a programme for the monitoring of marine pollution and its effects on marine ecosystems, paying particular attention to the special problems of specific bodies of water, including some semi-enclosed seas, if the nations concerned so agreed; and to promote the development, on an entirely voluntary basis, of a register of clean rivers.

16. In response to those requests, the UNEP secretariat had already initiated several programmes and had others in various stages of planning and development. In the field of marine pollution, for example, the Global Environmental Monitoring System (GEMS) now being established would eventually provide the framework for a wide variety of activities. Some activities relating to the global monitoring system were already under way, such as the Global Investigation of Pollution in the Marine Environment (GIPME), Pollution of the Oceans Originating on Land (POOL), River Inputs to Ocean Systems (RIOS) and Integrated Global Ocean Station System (IGOSS). Those programmes, most of which were concentrating on land-based sources of marine pollution, would be undertaken by intergovernmental or non-governmental organizations with support from UNEP. As far as planned actions were concerned, criteria for selecting clean rivers to be established by a group of experts would be considered at an intergovernmental meeting at which future action would be agreed on. A broad intergovernmental meeting on land-based sources of pollution in general was also contemplated.

17. The draft articles under consideration could affirm and recognize the functions and responsibilities of UNEP. With respect to the general functions, the convention could recognize the role of UNEP in providing the over-all integrated framework for comprehensively co-ordinating, reviewing and guiding activities of States and international organizations that might affect the quality of the marine environment. With regard to the specific responsibilities, the convention could recognize UNEP as the appropriate forum for the international community of States in its endeavour to establish, both at the regional and global levels, standards, rules and regulations for the prevention of marine pollution from land-based sources.

18. Mr. BUSTERUD (United States of America) said that the statement made by the Observer for UNEP was very valuable. His country had played an active part in the preparations for the United Nations Conference on the Human Environment, held at Stockholm in 1972, and was taking steps to implement the recommendations of that Conference and the decisions of the Governing Council of UNEP. In his view, the idea that UNEP was the appropriate organization in which to examine the question of land-based marine pollution deserved consideration. That was a subject in the study of which duplication of effort must be avoided. The articles of the convention that the Conference was engaged in elaborating should reflect the role of UNEP in that sphere.

19. Mr. MBOTE (Kenya) said that as the host country of UNEP, Kenya was privileged to follow its work closely. His delegation had noted that in some draft articles before the Committee, certain delegations had called for the establishment of an international organization which should be made responsible for co-ordinating various efforts aimed at protecting the marine environment from pollution. It would be advisable for those delegations to study the mandate of UNEP carefully; perhaps they would then be convinced that the appropriate international organization they had been calling for already existed in the shape of UNEP. In that connexion, he pointed out that in articles 11 and 24 of the proposal submitted by his delegation in document A/CONF.62/C.3/L.2, provision was made for UNEP to perform the functions indicated.

20. Mr. JAIN (India) said that his country wished to see UNEP play an important part in the preservation of the marine environment, particularly where land-based pollution was concerned.

21. Mr. HUSSAIN (Pakistan), referring to document A/CONF.62/C.3/L.7, said that his delegation had no difficulty in accepting article 1. He observed, however, that it was not specified in that article what authority would be responsible for deciding in which cases a ship had failed to comply with the provisions of the regulations on protection of the marine environment. Articles 2 to 4 referred to implementation of the

regulations in the territorial sea and on the high seas, but they did not take into account the concept of the economic zone, which had been widely supported in the Second Committee. That might be considered a serious shortcoming, especially as far as article 4 was concerned. Furthermore, if the flag State was the one that would have to take appropriate action, the discharge of that responsibility would require considerable time and the coastal State meanwhile would be unable to take appropriate measures for its own protection.

22. His delegation suggested that in article 2, paragraph 3, the words "the territorial sea or internal waters" should be replaced by the words "the areas of national jurisdiction". Article 4 should be similarly amended to embody that concept.

23. With reference to article 5, Pakistan considered that it was very important to avoid ships being unduly detained or delayed, although it felt that when vessels infringed the regulations, such acts should fall under the jurisdiction of the coastal State.

24. The CHAIRMAN suggested that, in accordance with the decision he had referred to at the previous meeting, the Committee should refrain from discussing the substance of the draft articles before it and from proposing amendments to the documents submitted, since those deliberations should be reserved for informal meetings.

25. If there were no objections, he would take it that the Committee was in agreement with that procedure.

It was so decided.

26. Mr. McCOMIE (Barbados) said that, in compliance with the recently reiterated decision, Barbados would like clarification of article 5, paragraph 4, of document A/CONF.62/C.3/L.7. What organization was to decide whether a vessel had been unduly detained or delayed, and what criterion would be used to determine compensation for damage suffered?

27. Mr. BREUER (Federal Republic of Germany) said that the question could be decided only by the authorities of the State which had detained or delayed the vessel, as, under existing rules, that would be the only solution.

28. Mr. SIMMS (United Kingdom), referring to the very interesting and informative statement made by the representative of Japan, noted that his delegation had reservations on two points. At that stage, however, he wished to comment on the practicability of coastal State powers to board and inspect in an area outside the territorial sea. The United Kingdom had made every effort to apply within its territorial sea of 3 miles the existing international conventions and agreements, and had found that extremely difficult. It was therefore particularly interested in the comments of the Japanese delegation on the costs and difficulties involved in controlling an area which might extend as far as 50 miles. It would therefore be grateful to receive more detailed information if the Japanese delegation could provide it.

29. Concerning the statement made by the representative of the United Nations Environment Programme, he welcomed the clarification on UNEP's co-ordinating role. In particular, his delegation had submitted a proposal for a diplomatic conference on control of land-based sources of marine pollution.

30. Finally, the United Kingdom regarded UNEP's role as a co-ordinating body as vitally important, and he questioned whether it should attempt an executive function, which might deprive it of its independence and prevent it from fulfilling its crucial functions of co-ordination and observation.

Organization of work

31. Mr. STEINER (Secretary of the Committee), said that the Secretariat would prepare a study on the use of ocean space, in accordance with paragraph 60 of the report in document A/CONF.62/C.3/L.3, which would not have any financial implications for the United Nations. The Conference would have that study at its disposal the following year.

32. The CHAIRMAN said that he wished to express in advance his thanks for the study on the transfer of technology to be prepared by the Secretariat.

33. Further, he asked the Committee to consider the possible format and character of the report to be submitted by the Third Committee to the Conference, and urged it to accelerate the

preparation of consolidated texts and to try to reduce the number of variants and working documents to the minimum.

34. Mr. STEINER (Secretary of the Committee) said that the Group of 77 had completed the preparation of its documents.

The meeting rose at 4.50 p.m.

15th meeting

Friday, 16 August 1974, at 10.50 a.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Reports of the Chairmen of the informal meetings

1. Mr. VALLARTA (Mexico), speaking as Chairman of the informal meetings on item 12 (Preservation of the marine environment), said that the drafting and negotiating group had considered draft articles concerning the basic obligations on States to preserve the marine environment and reduce marine pollution; the right of States to exploit their own natural resources; particular obligations; the obligation not to transfer pollution from one area to another; global and regional co-operation; technical assistance; and economic factors in respect of land-based sources of marine pollution. The results of the efforts of the drafting and negotiating group would be submitted to the informal meetings on item 12 and subsequently to the Committee for consideration.

2. Mr. METTERNICH (Federal Republic of Germany), speaking as Chairman of the informal meetings on items 13 and 14 (Scientific research and Development and transfer of technology), said that efforts were being made to arrive at specific alternative texts concerning general conditions for the conduct of marine scientific research. The informal consultation and negotiating group had prepared a complete table on that subject. The informal meetings had considered consent, participation and obligation of coastal States and international and regional co-operation for marine scientific research, including exchange and publication of scientific data and international ocean space institutions. Discussions concerning general conditions for the conduct of marine scientific research had been postponed to the next meeting. It had also been agreed that matters relating to the status of scientific equipment in the marine environment and responsibility and liability should be considered at a later stage in the context of the convention as a whole. Informal proposals on those matters had been submitted. As Chairman of the informal meetings, he had been requested to prepare a text concerning the matter of consent, participation and obligations of coastal States, as only a few proposals had been submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction on that subject. That text would be considered at the next informal meeting of the Committee.

Preservation of the marine environment (*continued*)

[*Agenda item 12*]

3. Mr. HOOR TEMPIS LIVI (Italy) said that his Government, greatly concerned over the marine environment, particularly of the Mediterranean Sea, had approved the provisions of principle 25 of the Declaration of the United Nations Conference on the Human Environment,¹ concerning the role of international organizations in the preservation of the environment. Recalling the statements made by the Executive Director of the

United Nations Environment Programme at the 31st plenary meeting, and by the representative of UNEP, at the preceding meeting of the Committee, he wished to comment briefly on the matter of co-operation among States and international bodies.

4. First, he agreed that States that had accepted the conventions on ocean dumping and pollution from ships should accelerate the national procedures required to bring those conventions into effect and should oblige ships flying their flags to respect their international obligations. In that connexion, he drew attention to the fact that his Government had now acceded to the 1973 International Convention for the Prevention of Pollution from Ships. His delegation also believed that States should co-operate in providing technical assistance to developing countries to enable them to participate in marine scientific research and to take measures to protect the marine environment, and he could therefore accept the provisions of article 17 (a) of the Kenyan draft articles in document A/CONF.62/C.3/L.2.

5. Secondly, he supported the concept that the United Nations Environment Programme should act as international co-ordinator of environmental activities within and outside the United Nations system, and not as a supranational regulatory agency seeking to enforce policies, rules and regulations or to take over the sectoral responsibilities of different international organizations. It should accordingly co-ordinate activities under the Environment Co-ordination Board established pursuant to General Assembly resolution 2997 (XXVII).

6. Thirdly, since he felt that the preservation of the marine environment, on the one hand, and the protection of the living resources of the sea on the other, should be dealt with separately by different organizations, the United Nations Environment Programme and other competent international organizations should co-operate closely in order to avoid duplication of effort, with UNEP providing the over-all framework for co-ordinating, reviewing and guiding the activities of States and international organizations that might affect the quality of the marine environment. His delegation would therefore prefer to retain, with some small amendments, the text submitted to the sea-bed Committee by Kenya in article XVII of document A/AC.138/SC.III/L.41 rather than article 14 of Kenya's proposal in document A/CONF.62/C.3/L.2. As far as specific responsibilities were concerned, the Governing Council of UNEP, of which Italy was a member, had recently instructed UNEP to assist States in establishing, at regional and local levels, standards, rules and regulations for the prevention of marine pollution from land-based sources; the future convention should also recognize UNEP as the appropriate forum for such an effort.

7. Fourthly, further consideration should be given to articles 12 to 16 of the Kenyan proposal.

8. The United Nations had taken decisions of historic importance in 1972 in establishing institutional machinery for envi-

¹See *Report of the United Nations Conference on the Human Environment* (United Nations publication, Sales No. E.73.II.A.14), chap. I.

ronmental activities, and due consideration must be given to UNEP in all international conventions concerning the preservation of the environment. Those considerations should be borne in mind in drafting the relevant articles of the convention being prepared by the Conference.

9. Mr. BARRA (Chile) said that he wished to inform the Committee of the running aground of the oil tanker *Metula* in the Strait of Magellan off the extreme southern coast of his country. The accident, which had occurred on 9 August, had resulted in the rupture of two of the ship's storage tanks, which in turn had produced an oil spill along a front of about 25 miles. There were legitimate fears that the ship might split apart and thereby endanger safety of navigation, the well-being of the inhabitants of the coast, and the life of local marine species.

10. Immediately following the accident, his Government had taken the necessary emergency measures and had informed the Inter-Governmental Maritime Consultative Organization (IMCO) of its occurrence, requesting the assistance of experts in the field of marine accidents and pollution from that organization, as well as from the Food and Agriculture Organization of the United Nations (FAO). He thanked the Governments of Canada and the United States for their offers of experts and technical assistance.

11. His country had also been obliged to prohibit temporarily passage through the Straits of tankers which had a capacity of more than 80,000 deadweight tons and whose draught was greater than 50 feet. That measure was merely temporary, however, and was not intended to circumvent in any way existing international treaties or to restrict freedom of navigation. Rather it was intended to safeguard navigation, since tankers of such dimensions were far more vulnerable than other vessels to the hazards of the climatic conditions which often prevailed in the area.

12. Steps had to be taken to prevent such accidents, and when they occurred international machinery was needed to deal with their serious consequences. It was especially necessary to devise formulae for international co-operation in cases where such accidents caused damage to developing countries such as his own which did not possess the same technological means as the industrialized countries to deal with them.

13. His delegation believed that jurists, scientists and the maritime industries could join forces to strengthen international co-operation and put a halt to the pollution of the seas and the destruction of their marine resources. Given the increased risks of pollution from oil spills from tankers, it was reasonable to expect the giant oil companies to finance regional stations under the supervision of IMCO whose purpose would be to reduce the risk that such spills might catch fire and to combat their contaminating effects on the marine environment. The Third United Nations Conference on the Law of the Sea was the appropriate forum for making an appeal to that effect. His country's purpose in bringing the *Metula* incident to the attention of the Committee was not to place blame on any State or company, but rather to suggest a possible method of dealing with such accidents in the future.

14. The CHAIRMAN commended the suggestions made by the representative of Chile to the attention of the Committee. He said that accidents such as the one involving the *Metula* served to increase awareness of the magnitude of the problem and to emphasize the urgent need for States to ratify the existing IMCO conventions, such as the 1969 International Convention on Civil Liability for Oil Pollution Damage, the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, and the 1973 International Convention for the Prevention of Pollution from Ships. He hoped that the *Metula* incident would spur the Committee to draft effective rules aimed at preventing such accidents and alleviating their effects when they occurred.

15. Mr. RIPHAGEN (Netherlands) shared the concern of the previous speaker and expressed sympathy with the people of Chile in connexion with the incident. According to his information the *Metula* was a crude oil carrier of 210,000 tons flying the Netherlands flag, owned by the Curacao Shipping Company and operated by Shell Tankers of Rotterdam. At the time of the accident two Chilean pilots were aboard. Soon after the ship went aground 60 nautical miles inside the Strait of Magellan, experts left Holland for Chile. The services of the Dutch tug *Black Sea* were also obtained. Since the vessel had no power, a lightening ship was already on its way and 14 tons of equipment, including power units, had been sent from Europe by air.

16. A total of 6,000 tons of oil had been spilled, but no further leaking had occurred. The availability of dispersant chemicals was not known. The owners of the ship were participating in the TOVALOP scheme, so that adequate coverage for damages was available.

17. A team of salvage experts was on the site and representatives of Shell were discussing with Chilean authorities the details of the clean-up operation.

18. The competent Netherlands authorities would, of course, institute the usual full-scale investigation of the circumstances and cause of the accident.

19. Mr. ZEGERS (Chile) thanked the Chairman and the representative of the Netherlands for their sympathetic remarks and said that he agreed with the Chairman on the need to encourage international co-operation in the realm of prevention of and compensation for oil pollution casualties. One form such co-operation could take was the ratification of relevant IMCO Conventions.

20. There was in addition a need for international machinery to come to the assistance of States, particularly developing States, which suffered damage from such accidents. Regional stations financed by the oil companies and supervised by IMCO, such as he had described in his earlier statement, would be helpful in that regard, and his delegation was studying the possibility of preparing a working paper on that subject.

21. Mr. MENSAB (Inter-Governmental Maritime Consultative Organization) said that IMCO had been kept duly informed with regard to the accident involving the tanker *Metula*. The Secretary-General of IMCO had been in touch with the Chilean Ambassador in London and had informed him that IMCO was ready and willing to provide experts to his Government. Furthermore, IMCO had been acting as an intermediary between Chile and other Governments which might be able to provide assistance.

22. He endorsed the remarks made by the Chairman on the need for States to adhere to the relevant IMCO Conventions, and hoped that reinforced treaty articles would be included in the new convention on the law of the sea making effective provision for situations of the kind the Committee was considering.

23. He drew the attention of the Committee to the 1971 IMCO International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage which had been intended to supplement the 1969 International Convention on Civil Liability for Oil Pollution Damage. When the fund came into force, it would be able to provide compensation to the extent of \$US 30 million, and in some cases up to \$US 60 million. But compensation was not the only concern of the 1971 Convention. The Director of the fund would be empowered to provide credit facilities to States to enable them to deal with such oil pollution casualties. Thus that Convention offered the possibility of international machinery, such as the representative of Chile had recommended, which would enable States, especially developing States, to deal with the problem of oil pollution casualties. The Convention required the ratification of eight States to enter into force,

and although there had been only one ratification so far, a large number of States were actively considering the possibility of ratification. IMCO expected that the Convention would enter into force some time in 1975.

24. Mr. SCHRAM (Iceland) said that although there still existed a fairly wide divergence of opinion among delegations on the constituent elements of a comprehensive convention on the marine environment, a compromise text must remain the ultimate aim of the Committee.

25. The majority of the participants in the Conference seemed to favour the zonal approach to the prevention of marine pollution. However, an equitable balance had to be struck between the competences of the coastal State and the flag State for that purpose within the 200-mile economic zone. The coastal State should be granted full jurisdictional rights to establish rules and regulations for the preservation of the marine environment on the condition that they were based on international standards and regulations. Thus the new régime of coastal State jurisdiction with regard to pollution control would not, as a number of delegations feared, adversely affect the freedom of international navigation.

26. In accordance with the principle of sovereign rights of the coastal State in the zone, it should enjoy the right to enforce pollution regulations there, just as it had the right to implement its economic jurisdiction in the area. Various proposals had been made concerning the enforcement jurisdiction of the flag State. The practice of international fisheries commissions however provided a valuable example of the workings of the coastal State's right to inspect and arrest foreign vessels where circumstances warranted. Of course, the coastal State should at all times exercise such rights without interfering unduly with other legitimate uses of the sea.

27. There would not be enough time at the current session of the Conference to examine in detail the important question of liability and damages, although hopefully a consensus could be reached on the acceptance of the principle of the liability of States for damage attributable to them caused in or to areas under the jurisdiction of other States and also of the principle of the responsibility of States to ensure that activities carried out under their jurisdiction or control did not cause damage to the environment of other States. In that connexion, the area beyond national jurisdiction posed a special problem. The international rules applicable there would have to be enforced by an international authority such as UNEP and liability for damage to that area had to be borne by the responsible States.

28. Sir Roger JACKLING (United Kingdom) expressed his regrets in connexion with the *Metula* accident and trusted that it would be possible to limit the damage to the marine environment to a minimum. The accident underlined the need for contingency planning and technical assistance. He noted with satisfaction that the informal working group had agreed on measures in that respect.

29. The prevention and control of marine pollution had been the subject of a great deal of effort in recent years, and he was pleased to inform the Committee that as a result of recent legislation, his Government was now in a position to ratify the 1969 International Convention on Civil Liability for Oil Pollution Damage, the 1971 International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, the 1971 amendments to the 1954 International Convention for the Prevention of Pollution of the Sea by Oil, the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and the 1972 Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft. The United Kingdom Government was already imposing on its ships those standards provided for in the 1969 amendments to the 1954 Convention, although those amendments were not yet in force internationally and their implementation imposed a competitive penalty on British ships. Together with a group of other European

countries, the United Kingdom had, in February 1974, signed the Convention for the Prevention of Marine Pollution from Land-based Sources, which should bring land-based sources of pollution in the North Sea and North-east Atlantic under control.

30. It was the view of his delegation that the function of the Conference was to provide an efficient and effective framework into which those Conventions and others could be incorporated while maintaining a sensible balance with other objectives. A scientific assessment of pollution must be made, and on that basis, the costs of preventing pollution must be related to the benefits derived from doing so.

31. While the cost factor would inevitably affect the speed with which pollution could be eliminated from the marine environment, his delegation deplored attempts to introduce double standards whereby a State might impose on foreign ships entering its water standards more stringent than those internationally agreed on, whilst at the same time insisting that its own ships visiting other States' waters should be allowed not to comply with even the minimum international standards.

32. Pollution was a world problem and his delegation viewed with much concern proposals which, in effect, would create second class systems and which were unlikely to establish generally acceptable provisions.

33. Any régime that emerged from the Conference must give considerable responsibility to coastal States in relation to control of pollution in the waters immediately bordering their territory. As a coastal State which had experienced major pollution incidents, the United Kingdom supported coastal State rights and obligations to control land-based and sea-bed sources of marine pollution and dumping provided that the proposed régime contained suitable safeguards.

34. Vessel-source pollution, though *in toto* probably less damaging than land-based, raised more difficult problems of control. Currently, responsibility in that field lay almost entirely with the flag States. That system had been criticized, and it was true that some flag States were more punctilious than others in the exercise of their responsibilities, but its achievements should not be forgotten. There was a justifiable sense of urgency with regard to pollution prevention and some impatience with the established process of international negotiations. Efforts had been made by IMCO and maritime and coastal States to speed up that process. Much had been agreed on and implemented through the adoption of resolutions recommending codes of practice, standard practices and guidelines which, together with the studies carried out by IMCO and distributed to member Governments, were frequently acted upon by flag States without any formal obligation to do so. Formal conventions took longer, but even there the record was good. Furthermore, proposals were under consideration which would enable technical amendments to conventions to be adopted by a "passive acceptance" procedure which would enable the machinery of international agreement to keep up with the rapidly changing technologies of the modern world.

35. It was against that background that the case that had been put forward for greater coastal State involvement in the control of vessel-source pollution should be examined. His delegation considered that any régime which allowed ships' discharge and construction regulations to be made in any way other than by international agreement would give rise to serious practical problems. It had expressed its views in that respect in the Second Committee at the 25th meeting. Some delegations had emphasized the need to confirm the right of States to protect their economic resources from pollution. While accepting that principle where it was efficient and effective, his delegation considered that the protection of economic resources from vessel-source pollution could most effectively be done through the drawing up of international agreements.

36. Referring to the question of enforcement, he said that his Government took its responsibilities in that field very seriously.

It inspected ships in port, acted on information from abroad and dealt with all cases reported to it either by administrative action or through prosecution. One of the main problems in that respect was obtaining adequate evidence to satisfy courts of law and obtain conviction. Coastal State enforcement powers would not change that problem. The 1973 Convention which used the system of port State inspection to provide evidence which the flag State needed went a long way to removing impediments to prosecution. Referring to the views just expressed by the representative of Iceland concerning the relevance of fisheries commissions' practices in that respect, he considered that as the collection of evidence was easier in the case of fisheries, such practices were not necessarily applicable in the case of marine pollution control. However, a more rigorous definition of the responsibilities of a flag State was necessary and his delegation had recently submitted proposals to the Second Committee (A/CONF.62/C.2/L.54) to that end.

37. His Government appreciated the concern of many States that regulations should be effectively enforced. It considered that means could be found to meet that concern while at the same time recognizing the important part that the flag States must continue to play in the prevention of marine pollution and the need to ensure that world trade was not unnecessarily impeded.

38. Ratification and implementation of existing international conventions in the field of marine pollution control was the best means of improving the marine environment, and he strongly endorsed the appeal by the Chairman to members of the Committee to make recommendations to their Governments to ratify those conventions as soon as possible, as most maritime countries had already done.

39. Mr. BREUER (Federal Republic of Germany) expressed his regrets concerning the *Metula* incident and trusted that the consequences would not be too disastrous. He informed the Committee that the International Convention Relating to Intervention on the High Seas in cases of Oil Pollution Casualties, the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage were now being considered by the Parliament of the Federal Republic of Germany. It was hoped that the parliamentary process would soon be completed and that his country would be in a position to ratify those conventions before the end of the year. Together with the Netherlands, Belgium, France, the United Kingdom, Norway, Sweden and Denmark, his country was a party to the 1969 regional Agreement for Co-operation in Dealing with Oil Pollution in the North Sea by oil. Such regional arrangements were useful in supplementing general world-wide regulations.

40. Mr. JAIN (India) expressed his sympathy to the people of Chile with regard to the *Metula* incident and commended the efforts being made by developed countries and the international organizations to limit damage to the marine environment.

41. He inquired whether in the case of pollution damage to fisheries, coastal State jurisdiction was enforceable in the port State only and not in the place where the damage had been caused.

42. The CHAIRMAN replied that the question of coastal State jurisdiction had already been considered in the Committee. He took it that the representative of India was emphasizing the importance of protection from pollution. That aspect could be the subject of further deliberations.

43. Mr. KOVALEV (Union of Soviet Socialist Republics), recalling the serious incident reported by the representative of Chile, stressed once again his delegation's sincere concern that the most effective measures possible should be adopted to prevent marine pollution. In March 1974 his Government had signed the Helsinki Convention on the Protection of the

Marine Environment of the Baltic Sea Area (see A/CONF.62/C.3/L.1); in July 1974 it had signed the 1973 International Convention for the Prevention of Pollution from Ships, and it was now giving serious consideration to acceding to the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, to which the representative of IMCO had referred earlier in the meeting.

44. The future convention should include strong provisions guaranteeing the right of coastal States to take measures beyond their territorial waters in the case of incidents at sea which were a serious threat to their interests; those provisions would apply not only to incidents involving ships but also to incidents connected with the exploitation of the sea-bed. His delegation supported the proposal for increased responsibility of flag States for any damage caused to other States through marine pollution from ships sailing under their flag. He could not, however, agree to the proposal that States should have full legal jurisdiction to prevent marine pollution within the 200-mile zone off their coast, since that would result in undue interference with international navigation and fishing and would give the coastal State the right to stop foreign ships for inspection, bring them to port and even imprison the captain and crew. Consequently, such a provision would raise freight costs and have adverse effects on the economy of developing countries. Accordingly, while he supported the application of stringent measures to prevent marine pollution, he could not agree that a coastal State had full legal responsibility for preventing pollution in the 200-mile zone off its coast.

45. Mr. LOPEZ REYNA (Colombia), speaking on behalf of the Group of 77, conveyed the sympathy of the Group to the people of Chile with regard to the *Metula* incident and expressed its strong support for the Chairman's appeal for co-operation from international organizations and the adoption of measures to help prevent such incidents.

46. Mr. YTURRIAGA BARBERAN (Spain) joined other delegations in expressing his sympathy to the people of Chile with regard to the *Metula* incident and trusted that it would be possible to limit damage to a minimum. His country understood the effects of such incidents as it had suffered similar damage as a result of oil and chemical pollution. Those incidents demonstrated the need to recognize the rights of coastal States with regard to pollution control in seas adjacent to their coasts. For that reason his delegation was one of the sponsors of document A/CONF.62/C.3/L.6 which contained provisions for a zonal approach to the problem of marine pollution. Exclusive flag State competence was insufficient and no longer acceptable. It was necessary to guarantee reasonable coastal State competence and to adopt measures for the prevention of marine pollution, together with provisions for the enforcement of sanctions against those responsible for damage. His country had ratified most international agreements for the protection of the marine environment against vessel-source pollution and he supported the Chairman's appeal to members of the Committee to make recommendations to their Governments to adhere to the relevant IMCO conventions.

47. Mr. MITSCHKA (German Democratic Republic) said that his country was a party to the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area and hoped to ratify in the near future the 1969 IMCO Conventions and the 1973 International Convention for the Prevention of Pollution from Ships.

Organization of work

48. The CHAIRMAN suggested that following informal meetings on items 12, 13 and 14, the Committee could meet formally on Monday, 26 August, to adopt its report. He also suggested that, as had been recommended by the bureau of the Committee, the report should be a short, concise, factual one, with annexes containing the consolidated and agreed draft

articles which had been considered in informal meetings and transmitted to the Committee in the form of letters from the Chairmen of the informal meetings to the Chairman of the Committee. The annexes would enable future sessions of the Conference to make full use of the results of the current session.

49. There was also a suggestion that he, as Chairman, should make a final statement summing up the work of the Committee which would not, however, commit the Committee. He intended to raise matters, in his statement, that would be relevant to the future work of the Committee rather than describe its past work.

50. Mr. HASSAN (Sudan), Rapporteur, said that the General Committee still had to take a decision concerning reports. He had, however, already consulted with members of the Committee on the possible format of the Committee's report. Two prevailing trends had emerged, the first being that the main objective of the report was to ensure that the progress made at the current session of the Conference would be continued at future sessions; it had been felt that the best way to attain that objective would be to have a factual report describing the work of the Committee, rather than one dealing with matters of substance. The second point was that most delegations felt that the trends in the Committee on different questions should not be reflected in the report as they would have to be extracted from the general debate held at the beginning of the session.

51. He therefore suggested that the report should be a concise, factual report describing the establishment of the Committee, the composition of the bureau, the organization of work, stating the number of meetings and listing the documents submitted. Annexes would be attached to the report, containing the communications from the Chairmen of the informal meetings on item 12 and on items 13 and 14; those communications would report the progress achieved in the informal meetings in the form of consolidated or agreed draft texts and whatever the Chairmen felt would be relevant to the work of the Committee at the next session of the Conference.

52. Mr. LOPEZ REYNA (Colombia), speaking on behalf of the Group of 77, requested the Chairman to cancel the next afternoon and evening meetings and also two meetings the following week to enable the Group of 77 to meet and adopt draft articles on the questions of pollution, scientific research and the transfer of technology. The Group of 77 felt it could make a valuable contribution to the work of the Committee by submitting consolidated draft articles.

53. Mr. VALLARTA (Mexico) said that, in his capacity as representative of Mexico, he supported the request made by

the representative of Colombia. However, in his capacity as Chairman of the informal meetings, he would have to request additional time for informal meetings, so that the drafts prepared by the small informal negotiating group could be submitted for approval to the informal meetings in which all members of the Committee were represented. He recalled that, in the past, documents submitted to the sea-bed Committee had been submitted by small groups and not approved by the majority of representatives, which had weakened them considerably. He therefore requested that two or three meetings should be reserved for informal meetings.

54. Mr. JAIN (India), Mr. BOHTE (Yugoslavia), Mr. LIU Han-hui (China) and Mr. RODRIGUEZ (Venezuela) also supported the proposal made by the representative of Colombia.

55. The CHAIRMAN suggested that, as a compromise, the Group of 77 should be invited to hold meetings that afternoon and evening, on Monday evening and on Tuesday morning or afternoon. If he heard no objection, he would take it that the Committee agreed to that suggestion.

It was so decided.

56. Mr. YTURRIAGA BARBERAN (Spain) observed that adequate time should be allowed towards the end of the session for translation of documents and of the report of the Committee.

57. Commenting on the format of the report, he agreed that the report should be a factual one, but suggested that, in addition to annexes containing the three consolidated texts, the amendments and alternatives contained in conference room papers to articles on which agreement had not been reached should also be included in the report.

58. Mr. VALLARTA (Mexico) said that the conference room papers on marine pollution and the comparative tables had been issued as informal documents, at the request of many delegations. The approval of the Committee would be needed before they could be issued as formal documents.

59. Mr. HASSAN (Sudan), Rapporteur, said that the conference room papers were highly informal documents. They would be considered further at informal meetings which could decide whether they should be included in the report.

60. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee accepted the format of the report as suggested by the Rapporteur, subject to the instructions, if any, of the General Committee.

The meeting rose at 1.20 p.m.

16th meeting

Friday, 23 August 1974, at 3.20 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Organization of work

1. Mr. ORION (Israel) said that in the informal meetings of the Committee, his delegation had made a proposal concerning co-operation among neighbouring coastal States bordering special areas such as the Mediterranean. The proposal had not been discussed or included in the summary of the results of consideration of proposals and amendments relating to the preservation of the marine environment (CRP/MP/14).

2. Annex I of the 1973 International Convention for the Prevention of Pollution from Ships had singled out special areas which, because of their particular oceanographic and

ecological condition and the particular character of their traffic, required special methods for the prevention of marine pollution. Regional co-operation in such areas was of the utmost importance and he requested the Chairman of the informal meetings on preservation of the marine environment to include the Israeli proposal in his report in the same way that the proposals of various delegations had been included in document CRP/Sc.Res./41.

3. The CHAIRMAN said that it was not advisable to reopen the discussion on that item at that stage and took it that the representative of Israel had merely wished to have the views of his delegation included in the records of the Conference.

4. Mr. SANDERS (Guyana) requested the Secretariat to issue a check list of all documents relating to the current stage of the work of the Committee.
5. The CHAIRMAN said that all official documents in the "L" series would be annexed to the statement of activities of the Committee.
6. Mr. HOOR TEMPIS LIVI (Italy) said that it was his understanding that all working papers from the informal sessions and in particular document CRP/MP/3/Add.1/Rev.1 would be before the Committee at the next session. His delegation reserved the right to refer to that working paper at the next session.
7. The CHAIRMAN said that all documents relating to the work of informal meetings of the Committee would be attached to the reports by the Chairmen of those meetings. Delegations were free to refer to any item at the next session.

Development and transfer of technology (*concluded*)*

[Agenda item 14]

8. Mr. VANDERGERT (Sri Lanka) commended the study by the Secretariat on the problems of the acquisition and transfer of marine technology (A/CONF.62/C.3/L.3). His delegation had intended to introduce a document (A/CONF.62/C.3/L.11) containing a draft article on the development and transfer of technology which was complementary to the proposal submitted by the representative of Nigeria on that subject (A/CONF.62/C.3/L.8). However, as a result of consultations with other interested delegations within the Group of 77, a set of articles on that subject had been elaborated, incorporating the basic ideas contained in his delegation's draft articles. He therefore wished to withdraw document A/CONF.62/C.3/L.11.
9. Miss AGUTA (Nigeria) introduced document A/CONF.62/C.3/L.12, which had been prepared by a drafting group of the Group of 77. In view of the limited time left at the current session, the sponsors had decided to submit the document to the Committee at that stage. Other delegations had since indicated their support for the proposals and had offered to join in sponsoring it; their names would be added to the list of sponsors in a revised version.
10. It was important to begin discussions on the development and transfer of technology, an essential ingredient of any convention on the law of the sea. The wording of document A/CONF.62/C.3/L.12 could be refined and improved if necessary, but the ideas it contained were sound and merited consideration. The draft articles were intended to deal not with the question of aid to developing countries which would be covered by the convention, but rather with a "give-and-take" between States for the benefit of mankind as a whole.
11. Article 1 dealt with the obligation of States to promote the scientific and technological capabilities of developing countries in the exploration, exploitation, conservation and management of the marine environment and ways and means by which those objectives could be achieved.
12. Article 2 dealt with the obligation of States to co-operate with the International Authority to be established under the convention.
13. Article 3, the key article of the draft, dealt with the obligations and responsibilities of the proposed Authority to assist the developing countries in the acquisition of the requisite technological know-how, including the establishment of a special fund to help developing States in that respect.
14. Article 4 contained proposals for the establishment of regional scientific centres in co-ordination with the Authority and with other international organizations and national marine scientific and technological institutes and the functions of such regional centres.
15. Mr. HUSSAIN (Pakistan) endorsed the views expressed by the representative of Nigeria on the development and transfer of technology. With few exceptions, marine scientific activities in developing countries were limited. There was a lack of knowledge of oceanographic conditions and of the marine environment. Exploitation of marine resources in those countries was hampered by numerous technological and scientific problems which could only be solved by a rapid transfer of technology and the development of marine science.
16. The draft articles submitted in document A/CONF.62/C.3/L.12, of which his delegation was a sponsor, were intended to outline the immediate steps which should be taken to assist developing countries in the development of their marine scientific research capabilities. He emphasized the need for international co-operation and technical assistance in the establishment of regional institutions, exchange of data, transfer of appropriate technical know-how, training of personnel from developing countries in marine technology, and exchanges of scientists and experts under bilateral or multilateral programmes. Such regional institutions should have access to scientific and technological information. The bilateral and multilateral programmes envisaged in the document were an important means of promoting interest in marine scientific research in developing countries and would facilitate co-operation among those countries. Extensive training programmes geared to the needs of developing countries and in line with national programmes to develop marine scientific research capabilities for the purpose of exploration and exploitation of marine resources should be undertaken.
17. His delegation shared the view that the International Authority should play an important role in helping developing countries to acquire know-how, including patented and non-patented technology, in accordance with the provisions of article 3 of the document, which also envisaged the establishment of a special fund for that purpose. The transfer of technology to developing countries should be on reasonable terms and in accordance with the economic capabilities, level of development and national requirements of those countries.
18. Mr. MANSFIELD (New Zealand) welcomed document A/CONF.62/C.3/L.12 as a significant event in the work of the Committee, and supported its general tenor. While specific provisions might require revision, it would be an excellent basis for the work of the next session.
19. His delegation attached considerable importance to the transfer of technology and believed that the Conference must produce worth-while results in that field in the form of concrete obligations. The acquisition of technology by developing countries was essential in order to enable them to explore effectively, exploit and manage the sea-bed and water column resources in areas within their jurisdiction. His delegation would not wish to see a perpetuation of the existing situation in which the technology required for the exploitation of sea-bed resources was concentrated exclusively in the hands of a few countries.
20. Mr. JAIN (India) said that the document marked a significant advance in the field of the transfer of technology. His delegation supported the general approach of the draft articles and would have sponsored them had it had sufficient time to study it.
21. The development and transfer of technology was of the utmost importance to developing countries. He had heard unofficially that as a result of the initiative taken by the Group of 77 some technologically advanced countries appeared to have taken decisions which were detrimental to the interests of developing countries. He deplored such actions and hoped that those countries would review their decision in the light of the views expressed by his delegation in that connexion at the 9th meeting of the Committee. There was a need for give and take between technologically advanced countries and developing

*Resumed from the 9th meeting.

countries; the former had technology to export and the latter had resources they wanted to import.

22. Referring to the draft articles under consideration, he said that his delegation would have liked to see specific mention of the development of shipbuilding and the acquisition of knowledge concerning the seas in article 1, paragraph 1, of that document and the addition of the words "to less technologically developed States" in paragraph 2.

23. Mr. WYNDHAM (Australia) said that as an importer of technology, his country shared the vital interests of developing countries in the transfer of technology and welcomed the proposals in document A/CONF.62/C.3/L.12. Developing countries must have access to marine technology in order to exploit the resources in zones under their sovereignty or jurisdiction. He suggested that the proposals be examined in the context of the work being done by United Nations agencies in the field of the transfer of technology, and, in particular, by the Intergovernmental Group on the Transfer of Technology of the United Nations Conference on Trade and Development (UNCTAD), and in the light of the Charter of Economic Rights and Duties of States which was being prepared by the United Nations.

24. Mr. GUEYE (Senegal) said that, as a sponsor of the document, his delegation considered that the proposals it contained would provide a useful basis for the future work of the Committee. He hoped that it would find support among developed countries. The transfer of technology was of vital interest to developing countries in the fight against underdevelopment.

25. Mr. VELLA (Malta) welcomed the draft articles introduced by the Nigerian representative. His delegation would give careful study to the proposals and might be in a position to join the list of sponsors at a later stage, particularly in view of the remarks by the representative of Nigeria regarding the possibility of incorporating changes in the document.

26. Mr. MBOTE (Kenya) said he agreed in principle with the approach taken in the document. If the developing countries were to have rights and obligations with regard to marine scientific research, they would have to develop their technology. Although many General Assembly resolutions on the transfer of technology had been adopted, few had been implemented. He noted with apprehension the fact that the developed States had more or less disregarded the subject of the transfer of technology, but hoped that they would state their views in more detailed discussion of the question.

27. Mr. LO Yu-ju (China), Mr. KOLCHAKOV (Bulgaria), Mr. MANANSALA (Philippines), Mr. O heocha (Ireland) and Mr. PAPAGEORGIOU (Greece) supported the view that the draft articles contained in document A/CONF.62/C.3/L.12 would provide a useful basis for consideration of the question of the development and transfer of technology at the next session of the Conference.

28. The CHAIRMAN announced that Colombia, the Congo, Gambia, Liberia and the United Republic of Tanzania had also agreed to sponsor the draft articles contained in document A/CONF.62/C.3/L.12.

29. Miss MARIANI (France) said that the draft articles on the development and transfer of technology, particularly articles 1, 2 and 4, were of great interest to her delegation. It was interested in the question of the transfer of technology and hoped to submit appropriate proposals at the next session of the Conference.

30. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that the transfer of technology involved complex new branches of technology which were already regulated to a certain extent in international law. He suggested that the World Intellectual Property Organization should be invited to the next session of the Conference.

31. The CHAIRMAN said that the question of which institutions concerned with patents or copyrights would be invited

had not yet been considered. The proposal to invite the World Intellectual Property Organization would be considered at an appropriate time.

32. Miss AGUTA (Nigeria) expressed her appreciation to all delegations which had supported the draft articles on the development and transfer of technology, and particularly to the new sponsors. She looked forward to working on the draft articles at the following session and hoped that still more delegations would agree to sponsor the draft.

Scientific research (*continued*))*

[Agenda item 13]

33. Mr. ZULETA TORRES (Colombia) introduced the draft articles on marine scientific research contained in document A/CONF.62/C.3/L.13, which reflected the consensus of the Group of 77 in the Third Committee but did not commit its members to any final position.

34. The draft articles were the result of the efforts of a number of developing countries that wished to reconcile their national interests with those of the international community with a view to stimulating scientific research, without prejudice to the legitimate rights of coastal States and land-locked and other geographically disadvantaged developing States. They provided for the right of the coastal State to conduct marine scientific research and to regulate it within the area in which it had competence, without prejudice to the limits and nature of its jurisdiction, which was being discussed by the Second Committee. In the international area the International Authority, whose structure was being decided by the First Committee, was to have full competence. The basic principle embodied in the document was that marine scientific research should not be conducted without the consent of the coastal State and that other States, international or regional organizations and juridical and physical persons must seek the consent of the coastal State.

35. Marine scientific research was essential to the rational management of the living and non-living resources of the water column, the sea-bed and the subsoil thereof, and to the maintenance of the ecological balance of the seas for the benefit of future generations. The coastal State should, however, in order to defend its own resources and for reasons of security, regulate research with a view to reducing the technological gap between the developed and developing countries. It should have the right to ensure that the research would be exclusively for peaceful purposes, that it would have unrestricted access to all raw and processed data and final conclusions and evaluations, and that the research would in no way affect the marine environment or violate international environmental standards.

36. Mr. JAIN (India) said that, although he was a member of the Group of 77, he had reservations with regard to some points in the draft articles, in particular the reference to "satellite" in item 2 (b), paragraph 2, subparagraph (ii), and to the reference to "remote sensing devices operating in the atmosphere or beyond" in item 2 (b), paragraph 2, subparagraph (v). The draft articles dealt with the regulation of marine scientific research in the area under national jurisdiction and/or sovereignty, which he understood to refer to the economic zone and the continental shelf, and also in the international area. Any marine scientific data, whether derived from pure or other scientific research, could be of use in matters relating to security, resource management and general uses of the seas. Once the coastal State had ensured that research would not interfere with its security interests or with resource management, it should not hinder research in the economic zone or on the continental shelf.

37. Mr. MBOTE (Kenya) fully supported the draft articles contained in document A/CONF.62/C.3/L.13. Since the draft articles were supported by a majority of members of the Con-

*Resumed from the 13th meeting.

ference, represented by the Group of 77, he requested the Chairman to include in his report a clear and specific statement of the support given to the draft articles.

38. The CHAIRMAN observed that the document spoke for itself as it represented the consensus of the Group of 77, and that any support expressed would be reflected in the statements of the various representatives. It would be almost impossible for the Rapporteur to ascertain exactly how many delegations supported each document.

39. Mr. LO Yu-ju (China) said that his delegation fully supported the draft articles contained in document A/CONF.62/C.3/L.13, and regarded them as a very significant contribution by the Group of 77. He proposed that the draft articles should be used as a basis for consideration of marine scientific research at the next session of the Conference. He endorsed the suggestion made by the representative of Kenya regarding the support expressed for the draft articles.

40. Mr. KOVALEV (Union of Soviet Socialist Republics) noted that the draft articles dealt with some of the most important aspects of marine scientific research and gave rise to serious concern. However, the draft could hardly be considered as anything other than an attempt to hinder negotiations and prevent the achievement of a consensus in the interests of all countries and all groups of countries. Adoption of the provisions in the draft would not only interfere with the progress of marine science, but might even bring scientific research to a halt with all the consequences which that would entail, primarily for the developing countries. The procedures provided for in the draft would seriously delay the organization of scientific research, which could make research outdated before it was undertaken.

41. Item 2 (a), paragraph 2, would give the International Authority a monopoly on scientific research; even those countries which supported that approach must realize that it could not serve as a basis for negotiation. The only basis for negotiation was freedom of scientific research in the high seas conducted for peaceful purposes and in accordance with the general principles of international law and environmental standards. In any case, it was quite clear that the International Authority would not have the necessary resources to conduct marine scientific research; marine scientific research was very expensive. Moreover, it was simply unrealistic to expect that sovereign States would place their own scientific personnel and research ships and institutions under the control of the International Authority. Giving the International Authority a monopoly on scientific research would only result in paralysing such research in the world oceans.

42. His delegation had frequently stated its views on the manner of conducting scientific research in the high seas. With a view to reaching a compromise solution at the current session, it had proposed that research on living and non-living resources of the economic zones should be conducted with the consent of the coastal State. Unfortunately, however, no attempts whatsoever had been made towards compromise during the current session, and now a draft representing the most extreme position had been prepared at the last moment and submitted to the Committee. He reiterated his delegation's position that all problems relating to the sea were interrelated and should be approached as a whole. One of the most basic parts of the package was freedom of scientific research; mutually acceptable solutions of other problems could be achieved only if the problem of scientific research was resolved in a way which would take account of the interests, not only of one group of countries, but of all countries in the world.

43. Commenting on the draft articles contained in document A/CONF.62/C.3/L.12, he said they contained many interesting ideas worthy of consideration, but his delegation could not accept the provision in article 3, subparagraph 1, that the International Authority should be competent in marine scientific research as a whole. The approach taken by his delegation

with regard to the development and transfer of technology was reflected in the draft it had submitted on pollution prevention and scientific research. If agreement was reached on the freedom of scientific research, his delegation was ready to support the inclusion in the future convention of provisions on the transfer of technology to the developing countries. However, if delegations were sincerely interested in the success of the Conference, they must all demonstrate a readiness to consider each other's interests.

44. Miss BIHI (Somalia) said that her delegation did not share the opinion of the representative of India concerning the interpretation of the reference to the various areas under the jurisdiction and sovereignty of the coastal State in the note with one asterisk in document A/CONF.62/C.3/L.13. Her delegation considered that the territorial sea, the economic zone, the patrimonial sea and the continental shelf had all been intended.

45. Her delegation also supported the constructive proposal made by the representative of Kenya.

46. Mr. LEON DUEAS (Ecuador) said that the wording of article 1 of document A/CONF.62/C.3/L.13 posed certain problems for his delegation. Nevertheless, it supported the remaining articles in that document since they reflected the approach already taken in Ecuador's national legislation. A number of delegations had expressed the fear that such an approach to the coastal State's control over scientific research in areas under its jurisdiction would be detrimental to the freedom of scientific research. Such was not necessarily the case. In 1972 Ecuador had received 15 requests to carry out scientific research in zones under its national jurisdiction or sovereignty. After having been brought into line with Ecuadorian law, all had been approved.

47. Mr. SANDERS (Guyana), quoting a United States Department of Defense study which indicated that only 20 per cent of all marine scientific research was carried out beyond the 200-mile limit, concluded that the provisions of item 2 (a), paragraph 2, of document A/CONF.62/C.3/L.13, applying as they did to only one fifth of all scientific research, should not be a cause of extreme consternation. The purpose of that article was to ensure that the International Authority itself would conduct scientific research in the international zone, or in any event maintain effective control over such research. Therefore, scientific research in the international area would be under the control of an International Authority which in turn would be under the control of all States in the international community.

48. Mr. ZULETA TORRES (Colombia), referring to comments which had been made concerning document A/CONF.62/C.3/L.13, emphasized that that document did not represent the final position of its sponsors. With regard to item 2 (a), paragraph 2, he emphasized that the developing countries would prefer the International Authority in which all States would be represented, rather than one or two technologically advanced countries, to have a monopoly of scientific research in the international area.

49. Mr. LUND (Norway) requested a clarification as to the meaning of the reference to "the remaining international area" in the note with two asterisks of the document submitted by Colombia.

50. Mr. ZULETA TORRES (Colombia) said that that note had been so worded in order not to prejudice the future determination of the area over which the International Authority would have competence.

51. Mr. SCOTT (Intergovernmental Oceanographic Commission) referred the Committee to the statement made by the Assistant Director-General for Science of UNESCO at the 41st plenary meeting of the Conference.

52. Though legally and historically a part of UNESCO, IOC had its own membership, and its own Assembly and Executive Council. Eighty-one member States, a majority of which were

developing countries, belonged to IOC, and the UNESCO Executive Board had recently urged the Director-General to continue his efforts to encourage member States of UNESCO, particularly developing countries, to join IOC and participate in its activities.

53. The high cost of oceanographic research, particularly the purchase and maintenance of ships and equipment, was the reason why there was more international understanding and co-operation in oceanography than in most other sciences. Even the richest developed countries had recognized that they could not "go it alone" and had to co-operate for the benefit of all. The World Data Centre was an example of such universally beneficial co-operation. By contributing data to that system, a State gained access to all available data from other sources. Every country therefore had an interest in stimulating marine science and technology to the greatest degree.

54. With regard to scientific research, which IOC preferred to call "scientific investigation of the oceans", the functions of the Commission were to develop, recommend and co-ordinate international programmes for scientific investigation in the oceans and related services; to promote and make recommendations for the exchange of oceanographic data and the publication and dissemination of the results of scientific investigation of the oceans; and to promote freedom of scientific investigation of the ocean for the benefit of all mankind, taking into account all the interests and rights of coastal countries concerning scientific research in the zone under their jurisdiction.

55. In carrying out that mandate the Commission had for many years sponsored multidisciplinary International Co-operative Investigations in a number of regional areas. In the Caribbean, mechanisms were being developed to continue the co-operation initiated under the Co-operative Investigations and to provide additional benefits to the participating States.

56. Such co-operative investigations often resulted in continued co-operation between member States of a region in the field of marine science and in the building up of their marine science infrastructures. Atlases embodying the data collected during the expeditions were published, such as the oceanographic atlas from the International Co-operative Investigation of the Tropical Atlantic published by UNESCO in 1973. A second volume dealing with chemical and biological oceanography was in preparation.

57. A number of programmes were being developed under the International Decade of Ocean Exploration to investigate certain oceanographic phenomena. For example, IOC was planning an investigation to be carried out in conjunction with the Food and Agriculture Organization of the United Nations (FAO) and the World Meteorological Organization (WMO) of the warm coastal current known as *El Niño*, which appeared periodically off the west coast of South America and caused the nutrient-rich upwelling to cease, with the concomitant disappearance of the anchoveta to the great detriment of the local fisheries upon which the economy of the coastal States largely depended. Participation in such programmes was open to all States subject to three conditions: that the participation of developing countries in all phases of the work from planning to final results be strongly encouraged in connexion with the development and transfer of technology; that collected data and samples, as well as the final conclusions, be made available as soon as possible to the coastal States; and that research must be conducted for peaceful purposes.

58. In the field of pollution control, an IOC International Co-ordination Group had just completed the preparation of a

comprehensive plan for the Global Investigation of Pollution in the Marine Environment (GIPME). At a meeting held in July at United Nations Headquarters that plan had been unanimously adopted for transmission to the IOC Executive Council. The plan contained a large number of projects calling for concerted action by developed and developing countries alike, by bodies in the United Nations system, and by non-governmental and regional organizations. Marine pollution monitoring would be pursued in co-operation with the Global Environmental Monitoring System (GEMS) of the United Nations Environment Programme (UNEP), and research projects on both processes and methodology would also be set up with the financial support of and in close co-operation with UNEP.

59. In the realm of the transfer of technology, the IOC working committee on training, education and mutual assistance was acting as a co-ordinating body for the marine science activities of the United Nations and the specialized agencies participating in the Inter-Secretariat Committee on Scientific Programmes Relating to Oceanography (ICSPRO). A series of regional workshops was planned to identify the needs and aspirations of coastal States, the first of which was scheduled to be held at Casablanca in November with participants coming from all countries in the region stretching from Tunisia to the Ivory Coast.

60. A study project on mutual assistance between States leading to a transfer of science and technology was in preparation. A consultant had already completed the preliminary study and IOC was awaiting comments on it from its member States.

61. At the eighth session of its Assembly the previous November, IOC had adopted resolution VIII-35, which stated its readiness, within the scope of its competence, to respond to all possible requests for scientific and technological advice from the Third United Nations Conference on the Law of the Sea and expressed the wish that the Conference take into account the opinion of IOC on the importance of promoting the scientific exploration of the ocean with a view to global study of its nature and resources. If the Conference intended to make any such requests, it would be advisable for them to be formulated before the end of the current session so that a response could be made in time for the next session of the Conference. For its part UNESCO pledged its co-operation with the work and follow-up of the Conference.

62. The CHAIRMAN expressed the appreciation of the Committee for IOC's offer of scientific and technical advice. The Committee might wish to take a formal decision to request the advice of IOC for the next session of the Conference.

63. Mr. YAÑEZ BARNUEVO (Spain), Mr. JAIN (India), Miss MARIANI (France), Mr. KACHURENKO (Ukrainian Soviet Socialist Republic), Mr. HUSSAIN (Pakistan) and Mr. MBOTE (Kenya) welcomed the Chairman's suggestion.

64. Mr. VARGAS (Mexico) recalled that General Assembly resolution 2467 (XXIII) had invited IOC to co-operate fully with the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. As a member of IOC, his delegation would like to see that body prepare a document in which special emphasis would be placed on the interests and needs of developing countries in the realm of marine scientific research.

65. Provisions on many of the elements to which the representative of IOC had just referred had been embodied in document A/CONF.62/C.3/L.12.

The meeting rose at 6.20 p.m.

17th meeting

Tuesday, 27 August 1974, at 11 a.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Preservation of the marine environment (*concluded*)*

[*Agenda item 12*]

1. Mr. TRESSELT (Norway) said that the purpose of his delegation's working paper (A/CONF.62/C.3/L.18) was to draw attention to the problem which arose when human activities disturbed the ecological balance of marine environments, not through pollution but by the introduction of living organisms not previously existing in the seas or by the transfer of a form of marine life to an area where the implications of its existence were unknown. The discovery in 1973 on the south coast of England of a new type of seaweed which appeared to have extraordinary properties of growth and unpredictable effects for existing marine life had lent urgency to the issue. The origins of that development seemed to have been accidental, but commercial enterprises had planned similar transfers of marine plant life in order to ensure the availability of raw material for the kelp-processing industry.

2. The effects of such interference with the natural balance of the marine environment were unpredictable and might be awesome. In the working paper, his delegation had formulated a tentative treaty provision as a means of focusing attention on the legal aspects of the subject, and thought that the Committee should consider the problem at the next session. The language used in the paper would of course permit the development of controlled undertakings in aquaculture and experimental research. On the other hand, if there was any uncertainty about the effects of interference with the natural state of the marine environment, the State concerned should consult with other interested States and the appropriate international organizations.

3. He wished to emphasize that the issue was separate from that of the pollution of the marine environment and that the introduction of new species through sewage or run-offs from land should be dealt with by the provisions for the prevention of pollution. His delegation's aim was to stimulate discussion on an important subject which might so far have been drowned in the more immediate worries about marine pollution. Its concern had already been reflected in the preparatory work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction: the Maltese proposal (A/AC.138/SC.III/L.33) included a provision for the maintenance of the natural state of the marine environment.

4. Miss MARIANI (France) suggested that the three references to "species" in the working paper should be qualified by the adjectives "plant or animal".

5. Mr. GAMBOA (Chile) said that it had unfortunately been impossible to introduce the document concerning the establishment of regional bodies responsible for providing assistance in case of accidents resulting in pollution of the marine environment, to which he had referred at a previous meeting, in time for it to be discussed at the current session. It would however be circulated before the end of the current session¹ and could be discussed at the next session.

Scientific research (*concluded*)

[*Agenda item 13*]

6. Mr. WALKATE (Netherlands) noted that sponsors of the draft articles on marine scientific research (A/CONF.62/

C.3/L.19) came from all parts of the world, and represented both geographically disadvantaged States and geographically advantaged coastal States and both developing and developed countries. That fact showed that it was possible to find common ground even before embarking on further negotiations.

7. The definition appearing in article 1 had been taken from WG.3/Paper No. 4 of Sub-Committee III of the sea-bed Committee, a text which had been reintroduced with slight drafting changes as document CRP/Sc.Res./2. Exploration and exploitation had been excluded from the scope of the draft articles because the sponsors wished to secure an adequate régime for pure scientific research. Marine scientists should not be unduly restrained in their quest for knowledge; knowledge of the sea was no less vital for the future of mankind than knowledge of the land. In order to strike a balance between the interests of pure scientific research and the interests of States, the draft articles stated as a matter of principle the right of all States and appropriate international organizations to conduct marine scientific research on an equal basis. However, the exercise of that right by the State or organization conducting the research was subject to the conditions set forth in article 5 and in article 6, paragraph 1; the coastal State's interests justified its right to participate directly or indirectly in research projects. On the other hand, neighbouring geographically disadvantaged States had an equal interest in scientific research; article 6, paragraph 2, provided for their right to be offered the opportunity of participating in projects. The essence of pure science was the availability of the results of scientific research; thus, article 6, paragraph 3, imposed an obligation on the State or organization conducting the research to ensure the publication of the results. His delegation regretted that during the informal meetings on items 13 and 14 there had been no time for a full discussion of procedures for the settlement of disputes—a matter referred to in article 6, paragraph 5.

8. Article 8 dealt with international co-operation; the sponsors had taken as a basis the text agreed in the informal meetings on items 13 and 14. The issue of international co-operation should not be controversial.

9. Mr. FITZ (Austria) said that as a land-locked country, Austria had participated in the formulation of the draft articles in document A/CONF.62/C.3/L.19 from the very beginning and believed that they merited close examination by the Committee. They represented the best attempt so far to reconcile the conflicting interests of the research States, the coastal States and the geographically disadvantaged States.

10. The draft articles respected the right to conduct pure scientific research beyond the territorial sea. The sponsors believed that that principle should be included in the convention not simply to accommodate the desires of the research States but to ensure the best conditions for scientific research. They were convinced that the right to conduct scientific research was vital for the economic progress of all mankind but that it ought not to be unlimited and unconditional. The right deserved to be safeguarded only if the research was of a purely scientific character. The coastal State was therefore entitled to monitor the conduct of research in the area where it had special rights and the sponsors relied on all the States concerned to ensure that pure scientific research was not used as a pretext for other activities. The monitoring function of the coastal State presup-

*Resumed from the 15th meeting.

¹Subsequently circulated as document A/CONF.62/C.3/L.21.

posed its close association with the research project. The research State must therefore notify the coastal State of proposed projects, and the coastal State had the right to participate in the project and have access to all data and samples.

11. The geographically disadvantaged States not only had the right to conduct scientific research but must also be notified of a project planned for the area in which a neighbouring coastal State had special rights. They were entitled to receive the same information as the coastal State and to be offered the opportunity to participate in the project.

12. The draft articles were not perfect but they did represent a sound basis for compromise: none of the sponsors, whether research States, coastal States or geographically disadvantaged States, had insisted on the complete satisfaction of their individual interests.

13. Mr. JAIN (India) said that the sponsors of the draft articles were not in fact a representative group: they were mainly the delegations of land-locked and research States; the delegations of coastal States were clearly under-represented. Indeed, the draft articles laid down principles concerning the coastal States which had been drafted without their participation.

14. He thought that the distinction made in article 1 between pure and applied research was not valid; surely the same sets of data could be used for commercial as well as for other purposes. The period of advance notification provided for in article 6, paragraph 1 (a), would ensure nothing more than the absolute freedom of scientific research. His delegation could accept article 6, paragraph 5, if the procedures for the settlement of disputes proved to be similar to those provided for in the United Nations Charter, but it could not accept that the coastal State should be required to submit to compulsory third party arbitration where scientific research in its economic zone was concerned.

15. He noted that several of the sponsors of the draft articles were members of the Group of 77, on whose behalf the representative of Colombia had introduced draft articles (A/CONF.62/C.3/L.13) setting forth positions opposed to those stated in the draft articles now under consideration.

16. He wished it to be shown in the records that his country had become a sponsor of the draft articles on the development and transfer of technology (A/CONF.62/C.3/L.12).

17. Mr. ZULETA TORRES (Colombia) said that the majority of the members of the Group of 77 had asked him to state that the draft articles referred to by the representative of India still reflected the consensus of the Group.

18. His own delegation could not see that the draft articles now under consideration shed any light on the problems of marine scientific research.

19. Mr. MBOTE (Kenya) agreed with the representative of India that the draft articles in document A/CONF.62/C.3/L.19 were not representative.

20. He challenged the sponsors to say how they proposed to give effect to the distinction which they claimed to be able to make between pure and applied research, for that was the very basis of their proposals. The sponsors should also specify what they meant by "the right to conduct marine scientific research" referred to in article 2.

21. The sponsors clearly supported the freedom of scientific research beyond the territorial sea. He asked them to explain how the land-locked countries, which were usually among the least developed countries, were to benefit from that freedom.

22. There was no mention of any arrangements under which coastal States allowing other States to carry out scientific research could enter into bilateral agreements with them. The Organization of African Unity in its Declaration of 1973 (A/CONF.62/33) had taken up a clear position on that point: the coastal State should allow the nationals of land-locked countries to share in the exploitation of resources on an equal

basis, in accordance with bilateral agreements. The sponsors appeared unwilling to admit that possibility even where only scientific research was concerned. He did not see how research could be undertaken in the various sea areas without bilateral agreements.

23. Mr. BOHTE (Yugoslavia) said that he regretted that the draft articles in document A/CONF.62/C.3/L.19, the sponsorship of which was very broadly based, had not been circulated earlier. His delegation had not yet been able to give them detailed consideration since they had only just been circulated. It would like to comment on them more fully at a later stage.

24. The CHAIRMAN explained that that document had not been distributed earlier because of the Secretariat's heavy workload.

25. Mr. RASOLONDRAIBE (Madagascar) announced that his delegation wished to become a sponsor of document A/CONF.62/C.3/L.12.

26. Turning to document A/CONF.62/C.3/L.19, he said that his delegation opposed the régime of notification laid down in article 6, paragraph 1 (a). However, the most important aspect of the draft was the coastal State's right to participate directly or indirectly in research projects (article 6, paragraph 1 (d)). Under that article, the developing countries would have the right to take part in the research operations organized by a limited number of technologically advanced countries. Nevertheless, his delegation believed that in the 200-mile economic zone the situation should be reversed: the developing coastal States must promote organized scientific research and it would be for them to invite others to take part in it.

27. For his delegation, there was no question of embodying in the future convention the assumption that the technologically under-developed countries should remain so. His delegation had very serious reservations on the draft articles in document A/CONF.62/C.3/L.19 and it urged other delegations to consider their position on them.

28. Mr. MOLTENI (Argentina) endorsed the views expressed by the representatives of India, Kenya and Yugoslavia.

29. Although document A/CONF.62/C.3/L.13 had been submitted by the delegation of Colombia alone, the ideas in it were shared by many developing countries which considered that marine scientific research required the prior agreement of the coastal State concerned.

30. His delegation did not agree with article 6, paragraph 2, of document A/CONF.62/C.3/L.19, which provided for special rights for the land-locked and geographically disadvantaged countries in the economic zone. But the country that exercised the rights in that zone was the coastal State; the only way that other States could take part in marine scientific research there would be by participating in such activities as the coastal State itself promoted.

31. He reserved his delegation's right to return to the matter at the next session of the Conference.

32. Mr. HUSSAIN (Pakistan) supported the views of the representatives of Colombia and India concerning document A/CONF.62/C.3/L.19.

33. His delegation was opposed to the views expressed in that document, particularly in articles 1, 6 and 7, and believed that any marine scientific research activity in the area beyond the territorial sea should be carried out only with the explicit consent of the coastal State concerned. Moreover, the question of the jurisdiction and rights of the coastal and land-locked States in the economic zone had still to be decided by the Second Committee.

34. His delegation would favour a régime of consent as proposed in A/CONF.62/C.3/L.13, and it reserved the right to return to the matter at the next session of the Conference.

35. Mr. FITZ (Austria), replying to the criticisms of document A/CONF.62/C.3/L.19 voiced by the representative of

Kenya and others, explained that the sponsors did not claim to represent all geographical and special interest groups. Nevertheless, a sizable number of States had endorsed the views expressed in that document.

36. He agreed with the representative of Kenya that it was indeed very difficult to define pure scientific research, and the sponsors had not approached the matter light-heartedly. However, clear-cut concepts were not always possible in international relations. The States concerned must try to reach agreement on whether a given project fell under the heading of pure or applied science. If they could not agree, they should have recourse to the machinery laid down in article 6, paragraph 5, of the document.

37. Mr. YU (Singapore) welcomed the view of the Netherlands and Austrian representatives that document A/CONF.62/C.3/L.19, of which his delegation was a sponsor, was a sincere attempt to find a common approach that would take account not only of the position of coastal and research states but also of the land-locked and geographically disadvantaged countries, particularly those without facilities for marine scientific research.

38. His delegation was increasingly concerned at the trend of the Committee's discussions, which had been conducted almost exclusively between coastal and research States; the interests of the land-locked and geographically disadvantaged States in marine scientific research and its applicability to them seemed to have been ignored. It also regretted the implicit assumption made by some delegations that the land-locked and geographically disadvantaged States would be for ever unable to conduct marine scientific research or utilize its results. Moreover, his delegation was sorry that specific mention had been made of certain sponsors of document A/CONF.62/C.3/L.19.

39. In that connexion he recalled that the first note to document A/CONF.62/C.3/L.13 made it clear that the members of the Group of 77 would not be bound by its provisions and their final position was not committed by it. Since its country's interests were by no means sufficiently reflected in that document which, in fact, took account of only one viewpoint, his delegation had felt itself duty-bound to join in sponsoring document A/CONF.62/C.3/L.19, which was not a negotiating paper reflecting the bargaining position of the sponsors, but a realistic attempt to lay the foundation for a common position accommodating the rights and interests of all States.

40. Mr. RUHAİM (Libyan Arab Republic) supported the views expressed by the representatives of India, Kenya and others regarding document A/CONF.62/C.3/L.19.

41. His delegation could not accept the notification system, but it insisted on prior consent by the coastal State concerned, without which no marine scientific research could be carried out in the area under national jurisdiction.

42. With respect to article 6 of the document, his country could not agree, for security reasons, to the publication of marine scientific research without the explicit consent of the coastal State concerned. As far as article 7 was concerned, as a member of the Group of 77, his country felt that marine scientific research in the international area should be conducted by the International Authority.

43. Mr. LEROTHOLI (Lesotho) pointed out that the first note to document A/CONF.62/C.3/L.13 read: "The delegate of Colombia, as the Chairman of the Group of 77, while presenting this document, would like to point out that it represents the consensus of the Group of 77 of the Third Committee, without committing the final position of members of the Group." Moreover, the explanatory note preceding the draft articles in document A/CONF.62/C.3/L.19 read as follows: "These draft articles do not necessarily represent the final position of the sponsors on individual articles or on the draft as a whole. Sponsorship does not prejudice their position on previous or future draft proposals."

44. His delegation was absolutely loyal to the Group of 77 and would not seek to subject document A/CONF.62/C.3/L.13 to ridicule. However, that document paid very little attention to the interests of the land-locked and geographically disadvantaged States, which had been included only as an afterthought in paragraph 4. It was therefore surprising that some delegations considered it improper for those States to embody their ideas in another document.

45. Some delegations had argued that since the Second Committee had not yet come to any decision regarding the rights of the land-locked and geographically disadvantaged States, the matter should not be considered by the Third Committee. There was a serious misunderstanding there: no economic zone had yet been created for any country, and the members of the Third Committee could still express their views on how matters should be arranged in that zone. He reserved his delegation's right to speak again on the matter if necessary.

46. Mr. GOLLEY-MORGAN (Sierra Leone) announced that his delegation had joined the sponsors of document A/CONF.62/C.3/L.12.

47. He reserved his delegation's right to comment on document A/CONF.62/C.3/L.19 at a later date.

48. Mr. COLLINS (Liberia) thanked the Singapore representative for having given the reasons for his delegation's sponsorship of document A/CONF.62/C.3/L.19. That paper had met with a great deal of resistance from members of the Group of 77. His delegation had noted, however, that the draft articles did not necessarily represent the final position of the sponsors. He agreed with the remarks made by the representatives of the Netherlands and Austria and supported the position of the representative of Lesotho.

49. Mr. ZULETA TORRES (Colombia) informed the Committee that the proposals referred to in paragraph 4 of document A/CONF.62/C.3/L.13 would be circulated for the Committee's information if it so desired.

Statements by the Chairmen of the informal meetings

50. Mr. VALLARTA (Mexico), Chairman of the informal meetings on item 12 (Preservation of the marine environment) said that documents A/CONF.62/C.3/L.14 and 15 were self-explanatory.

51. Mr. METTERNICH (Federal Republic of Germany), Chairman of the informal meetings on items 13 and 14 (Scientific research and Development and transfer of technology), introducing the note on the activities of those informal meetings (A/CONF.62/C.3/L.16) and the annex containing relevant texts (A/CONF.62/C.3/L.17) said that those documents, as Conference Room Papers Nos. 41 and 42, had been discussed at the informal meeting on 22 August 1974 and had subsequently been modified in the light of the suggestions made at that meeting. They endeavoured to convey a concise, factual, and non-controversial picture of the work done at those meetings. There had been lively discussions both at the informal meetings and in the open-ended drafting and consultation group. The interest shown in the items was keen, as could be seen from the number of proposals submitted. It had been clear from the outset that the work should be directed towards agreeing on a common text or, if that was impossible, to consolidating texts into clear-cut alternatives. One problem was that many of the points under consideration had not been discussed in the sea-bed Committee. The meetings had, however, succeeded in drafting common texts on general principles and on international co-operation, including publication of scientific data. On the crucial points "right to conduct marine scientific research" and "consent, participation and obligations of coastal States", various alternative approaches had been consolidated. On other points, the proposals introduced had been recorded and would be discussed in greater depth at a later stage. The informal meetings had therefore created a basis

of work on marine scientific research which would certainly prove very useful at the next session of the Conference.

52. Owing to lack of time, the informal meetings had not been able to consider the development and transfer of technology and no proposals had been introduced. Since texts had been submitted to the Committee in the meantime, the matter would have to be taken up at the next session, but without losing sight of the momentum gained in the work on scientific research.

53. Mr. SENNING (Sweden) supported the suggestion made by the representative of Italy at a previous meeting that the conference room papers on item 12, which had been introduced but not considered at the informal meetings, should be circulated as an addendum to document A/CONF.62/C.3/L.14. It would be very helpful to delegations when seeking the advice of experts before the next session to have all the pending texts collected together in one document. The appendix might be entitled "Conference room papers containing proposals or amendments informally introduced but not yet considered by the drafting and negotiating group of the informal meetings on item 12".

54. The chairman said that in the absence of any objection he would take it that the Committee wished such an appendix to be circulated.

It was so decided.

55. Mr. JAIN (India) suggested that it would be helpful if studies could be made by competent international organizations on two matters of crucial importance which the Committee had not had time to discuss fully at the current session. First, if the Committee agreed, the Chairman might request the representative of the Inter-Governmental Maritime Consultative Organization (IMCO) to prepare a study defining the precise areas under the jurisdiction of coastal States where those States had fishery or other economic interests, so that that protection could be focused on them and navigation in other areas remain unhampered. Secondly, many developing countries had expressed misgivings during the informal discussions as to their ability to comply with an absolute obligation to monitor pollution control and many delegations had suggested that a proportion of the sums spent by a country on pollution-producing activities should be devoted to pollution control. He wondered if the representative of the United Nations Environment Programme (UNEP) could prepare a study on that matter for submission at the next session.

56. Mr. MENSAH (Inter-Governmental Maritime Consultative Organization) said that IMCO would be able to collect the required information and make it available to the next session of the Conference.

57. Mr. KOVALEV (Union of Soviet Socialist Republics) said that his delegation was unable to support the request for the study by IMCO because the Committee was asking that organization to study the possible implications of measures upon which full agreement had not been reached.

58. Mr. SIMMS (United Kingdom) said that his delegation also had reservations about that proposal, which he was not sure fell within the competence of IMCO. It could be included in the agenda of the forthcoming meeting of the Marine Environment Protection Committee of IMCO but he felt that at least one other specialized agency—the Food and Agriculture Organization of the United Nations—was also concerned.

59. Mr. LEROTHOLI (Lesotho) reminded the Committee that even the question of the territorial sea had not yet been defined by the Conference and the request to IMCO seemed also to include the new concept of an area beyond that zone over which the coastal State might have some jurisdiction. While the proposal might be a useful one at the appropriate moment, he considered it premature pending some decision on those issues.

60. Mr. JAIN (India) said that the proposal had been intended not only to protect the interests of the coastal State but also to help international navigation. However, since it had met with opposition, he would withdraw it.

61. The CHAIRMAN invited the Committee to comment on the second study proposed by the Indian representative.

62. Mr. AHMED (United Nations Environment Programme) said he understood that the Indian representative would like UNEP to make a study on the comparative costs of the environment component of projects which might cause marine pollution. Speaking as a legal, not a technical, expert, he said that it would be difficult for UNEP to prepare specific proposals or figures, since costs differed from area to area and from country to country and it would be necessary to have information on the current and future economic development plans of the different countries. He assumed that the Indian representative was concerned about the capacity of developing countries to assume obligations to monitor pollution and wished to gain some idea of the cost to individual developing countries.

63. He suggested that the best solution would be for UNEP to be asked to submit to the next session of the Conference a detailed explanation of its Global Environmental Monitoring System (GEMS). Delegations would then be able to ascertain what was expected of their Governments under the system and to discuss whether joint or individual obligations could be accepted or whether their countries would co-operate with international organizations.

64. Mr. JAIN (India) said that the type of study suggested by the UNEP representative would be extremely useful and he would be prepared to modify his suggestion accordingly. He would welcome the views of other representatives.

65. The CHAIRMAN suggested that the Committee should request UNEP to submit for consideration by the Committee at the next session of the Conference a detailed study on the Global Environmental Monitoring System, containing an account of how the system worked and all the relevant implications.

It was so agreed.

Consideration of the statement of activities of the Committee

66. Mr. HASSAN (Sudan), Rapporteur, introduced the draft statement of activities of the Committee (A/CONF.62/C.3/L.20) and drew attention to the following correction: in section V, paragraph 10, the word "alternates" should read "alternatives".

67. As agreed by the Committee, in accordance with the General Committee's recommendation, the document was a brief and concise account of the Committee's activities. In that connexion he drew attention to the explanatory note in paragraph 1, and to paragraph 4.

68. In accordance with the General Committee's recommendations on brevity of reports, the notes on the informal meetings—referred to in paragraph 10—had been issued in the series under the symbol A/CONF.62/C.3/L. . . . The only annex to the report would therefore be a list of the formal proposals presented to the Committee at the current session.

69. The CHAIRMAN said that, in accordance with the procedure agreed on by the General Committee, no formal approval of the draft statement was needed, but comments by members of the Committee could be recorded.

70. Mr. DAHMOUCHE (Algeria) said that the wording of the second sentence of paragraph 11, in particular the word "recommends", seemed to imply a doubt as to whether the Committee would in fact hold another session.

71. Mr. LEROTHOLI (Lesotho) suggested that all that was needed was an expression of the Committee's intention to con-

tinue its work and to complete the task assigned to it under its terms of reference.

72. He also asked for an explanation of the reason for including the quotation in paragraph 5.

73. Mr. HASSAN (Sudan), Rapporteur, referring to the comment of the Algerian representative, said that he would modify the wording of paragraph 11 to make the position clear.

74. With regard to the point raised by the representative of Lesotho, he said that the quotation in paragraph 5 of the understanding reached in the sea-bed Committee was taken from the note to the Conference's decision on the allocation of items (A/CONF.62/29), which was referred to in paragraph 4 of the draft statement of the Committee's activities. The understanding had been reached as the result of arduous and painstaking negotiations and had been accepted in its entirety by all the Committees.

75. The CHAIRMAN drew attention to the last paragraph of the note at the end of document A/CONF.62/29: "It is therefore recommended that the same understanding should be carried forward in respect of the Main Committees of the Conference, preliminary to the adoption of the pertinent final provisions of the Conference." If there were no further comments, he would assume that all members of the Committee were satisfied with the explanation.

Concluding Statement by the Chairman

76. The CHAIRMAN said that, with the end of the session approaching, he would not attempt to appraise the substance of the Committee's work; nor would he attempt to commit members of the Committee to any conclusions. He wished to make a kind of personal summing up and to express his views mainly on the Committee's future work.

77. In the first place, he felt that the procedural arrangements adopted had proved correct and efficient and should be followed at the next session. That would mean holding informal and formal meetings on item 12 and on items 13 and 14—though procedures could be improved at the next session in the light of the progress made.

78. In the limited time available—11 and 10 informal meetings respectively on item 12 and items 13 and 14, and only 17 formal meetings—good progress had been made. At the next session the Committee should start work immediately on items 12 and 13 and 14, where it had left off, without any general debate.

79. He had been gratified at the businesslike approach and the co-operation and mutual understanding which had been shown, all of which had been important in the negotiation process. There had been a growing desire and readiness for

mutual accommodation which he was confident would continue at the next session. The Committee had advanced in its endeavour to prepare the main elements of an "umbrella" treaty, but serious work would now be needed to prepare the draft articles which would form the body of the draft convention.

80. However, there were several important problems still outstanding. In his own opinion, the main problem on which the Committee had to concentrate was the scope and extent of coastal State jurisdiction and the rights and duties of other States, in respect of both marine pollution control and scientific research.

81. There seemed to be general agreement on the method of work for consideration of questions relating to standards, jurisdiction and enforcement (see A/CONF.62/C.3/L.14). That augured well for future discussions.

82. On the preservation of the marine environment, some progress had been made in formulating States' obligations and rights to exploit their own resources, but there were still alternatives on some of those issues. There were also many other important issues. At its next session the Committee would have to consider very carefully the distinction between standard-setting and enforcement measures.

83. Regarding scientific research, some texts had been agreed upon at informal meetings on general principles and on global co-operation, as set forth in document A/CONF.62/C.3/L.17. There were many problems outstanding for the next session; there were a number of alternative texts indicating possible areas of agreement, and also some informal texts which had not yet been fully studied.

84. With regard to the development, acquisition and transfer of technology, only two working papers had been submitted so far, namely documents A/CONF.62/C.3/L.8 and 12, the latter containing most of the elements of the former. On that subject, which was less controversial than others, the Committee should concentrate on preparing draft articles.

85. There was much work to be done before the next session. The papers produced at the current session and all the relevant papers submitted to the sea-bed Committee must be studied, so that members would be prepared for a new stage of negotiations, before and during the next session.

86. Mr. SANDERS (Guyana) asked that the Chairman's statement should be reported in detail in the summary record.

It was so decided.

After an exchange of courtesies, the Chairman declared that the Third Committee had completed its work for the session.

The meeting rose at 2.05 p.m.

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