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THIRD CONFERENCE ON THE LAW OF THE SEA

PROVISIONAL

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31 July 1974

ORIGINAL: ENGLISH

Second Session

SECOND COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE EIGHTEENTH MEETING

Held at the Parque Central, Caracas,
on Monday, 29 July 1974, at 3.25 p.m.

Chairman:	Mr. AGUILAR	Venezuela
Rapporteur:	Mr. NANDAN	Fiji

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CONSIDERATION OF SUBJECTS AND ISSUES AND RELATED ITEMS: CONTINENTAL SHELF (A/9021) (continued)

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.

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 present meeting.

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.

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.

Mr. ANDERSEN (Iceland) agreed to comply with the Chairman's request in order to facilitate the work of the Committee.

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.

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, 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.

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.

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, failed to establish either a geographical or a

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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 valuable contribution 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.

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 would extend to the superjacent sea-bed; when it extended beyond the 200-mile zone, the coastal State would retain its rights 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. In the area between the end of its 200-mile zone and the outer edge of the continental rise, the coastal State should have rights of the same 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.

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.

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.

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The Conference should also consider rules for the delimitation of the national [illegible]. The 1969 Judgement of the International Court of Justice on the North Sea Continental Shelf Cases had been exploited excessively. A distinction should be drawn [illegible] Judgement 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 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.

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.

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 article submitted by her delegation to the spring session of the Sea-Bed Committee (A/AC.138/SC.II/L.37).

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.

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

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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 Declaration.

The International Court of Justice in its Judgement 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.

Argentina was not a party to any of the four Geneva Conventions nor was it a litigant in the ICJ Cases. Nevertheless, those instruments proved the prior existence of customary rules which constituted the legal basis for her country's position.

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.

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.

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

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which would separate the territorial domain of the coastal State from the international sea-bed 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 and geological criteria were complementary and both had the same legal validity. Argentina did not agree with those who advocated the establishment of a distance criterion alone for fixing the outer limit of the continental shelf. The rules which the Conference would establish should cover cases where the continental shelf was either greater of less than 200 miles, as had been stated by the representatives of Peru, Portugal, Bangladesh, Honduras, Nicaragua, Finland, Australia, El Salvador, Spain and others. Any future convention must be based on current customary international rules and respect for the acquired rights 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 that land-locked countries could be set aside in the consideration of the effects of the Geneva Convention on the Continental Shelf and 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 solutions should be sought to correct international injustice.

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 one of the most important

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foundations for her country's continually stated claim for the restitution of those Islands which legally, historically and geographically were part of its territory.

The declarations of Montevideo, Lima and Santo Domingo and the Inter-American Juridical Committee as well as the Political Declaration of the Fourth Summit Conference of Non-aligned Countries 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 present 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 more balanced international law of the sea. However, it could not accept the slightest questioning of its title to its entire continental shelf.

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 priviliged 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 disburb. That argument was open to question for several reasons. Firstly, 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 judgement of the International Court of Justice in the North Sea Case 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.

In any case, the present Conference had been convened not to protect acquired rights but to review the entire law of the sea and introduce an element of justice

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(Mr. Chao, Singapore)

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.

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 resources, of the various limits proposed for national jurisdiction" contained in document A/AC.138/87. 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 UNCTAD, in his statement in the sixth 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

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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.

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.

Mr. OCHAN (Uganda) emphasized that the world situation had changed considerabl 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.

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 the 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.

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.

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 coasta 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 conce of the common heritage of mankind.

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(Mr. Upadhyaya, Nepal)

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 existinc 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 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.

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.

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, 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.

Mr. CARPIO CASTILLO (Venezuela) said that his delegation's views regarding the continental shelf were set forth in document A/AC.138/SC.II/L.21 (A/9021, vol. III, pp.19-21), a text of which his delegation had been a sponsor.

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.

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(Mr. Carpio Castillo, Venezuela)

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 document A/AC.138/SC.II/L.21, the continental shelf should extend to the outer limits of the continental rise. His delegation consequently considered that article 19, paragraph 2, in 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.

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 in document A/AC.138/SC.II/L.21, by the simple deletion of article 15; to that end, his delegation would discuss the matter with the other sponsors.

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.

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.

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,

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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.

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.

Article 2, relating to islands, faithfully reflected existing international law.

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.

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.

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

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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 forty-sixth 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.

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.

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.

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.

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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.

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.

Uruguay, which had not ratified the 1958 Geneva Convention on the Continental Shelf because the definition of the continental shelf contained therein was too imprecise, but which had adopted that definition in its domestic legislation, was ready to accept a new definition that would correct the defects inherent in the 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.

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 judgements on the North Sea Continental Shelf Cases, which had been mentioned by so many delegations.

Nevertheless, the geological concept of the shelf should be modified in two respects in so far as the applicable legal concept was concerned. Firstly, 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

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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.

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 rise. The sovereign rights of the coastal State should accordingly extend to the external limit of the continental rise, where it bordered the ocean floor. Over that area, the coastal State possessed the inalienable rights inherent in its sovereignty.

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.

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 rise 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.

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.

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(Mr. Lupinacci, Uruguay)

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.

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.

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.

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.

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.

Lastly, the legal status of the superjacent waters as high seas might also be affected, depending upon the final shape of the economic zone.

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.

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.

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.

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(Mr. Cheema, Pakistan)

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.

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.

Mr. CHEHAB (Egypt), having briefly recalled the history of the concept of the continental shelf, said that since the Truman Declaration 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.

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.

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(Mr. Chehab, Egypt)

The definition of the continental shelf in article 1 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 disadvantage 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.

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 the 1958 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.

The idea of the exclusive economic zone, which had been set forth in the OAU Declarations of 1973 and 1974 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.

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.

He hoped to be able to comment on concrete proposals submitted to the Committee at a later stage.

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.

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(Mr. Ballah, Trinidad and Tobago)

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.

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.

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 unspoilt beaches, and, in certain cases, with fertile fishing grounds.

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.

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

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(Mr. Ballah, Trinidad and Tobago)

provision of international law; it was inherent in the sovereignty which the coastal State exercised over its adjacent land territory.

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.

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.

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.

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

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(U Kyaw Min, Burma)

Conference must express "natural prolongation" in terms of the continental margin. His delegation 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.

Since the entire seacoast of Burma was washed by the waters of the Bay of Bengal, 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 Continental Shelf Convention 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.

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.

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

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(U Kyaw Min, Burma)

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.

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 a previous meeting.

The meeting rose at 6.10 p.m.

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