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UNITED NATIONS

THIRD CONFERENCE ON THE LAW OF THE SEA

PROVISIONAL

For participants only

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14 August 1974

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Second Session

SECOND COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE THIRTY-SIXTH MEETING

Held at the Parque Central, Caracas,
on Monday, 12 August 1974, at 10.50 a.m.

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

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ARCHIPELAGOS (A/CONF.62/L.4, A/CONF.62/C.2/L.22 and L.49) (continued)

Mr. DJALAL (Indonesia) recalled that in the plenary his delegation had described the concept of 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 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.

Indonesia had proclaimed itself an archipelagic State on 13 December 1957. His delegation hoped that the Conference would support the concept of archipelagic State; for their part, the archipelagic States were prepared to safeguard the legitimate interests of the international community.

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 Sea-Bed Committee (A/AC.138/SC.II/L.48). 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.

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(Mr. Djalal, Indonesia)

Article 2 constituted one of the basic elements of the concept of 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 had rejected 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.

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 interests. 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 problem of traditional fishing in Indonesian waters; discussions on that topic had also begun.

Article 4 stipulated the obligations of the archipelagic State, including 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.

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.

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.

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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.

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.

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.

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 concern for other developing countries for whom geography had created particular problems. The reasonable demands of all those countries must be met.

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.

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(Mr. Ogiso, Japan)

Since Japan itself consisted of a number of islands, it could understand those countries' wish to preserve their political, historical and geographical integrity.

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; second, by safeguarding freedom of navigation for international maritime traffic; and, third, by providing adequate protection of the existing navigational and other rights and interests of the countries in the region. His delegation attached great importance to those three points, and its final position depended on their acceptance.

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. 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 if the facts bore out the view of the archipelagic countries that a 48-mile limit would not be sufficient.

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 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

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(Mr. Ogiso, Japan)

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.

Application of the archipelagic principle would entail problems relating to the existing uses of the sea. 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.

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. It hoped that they could be improved by informal consultations with countries directly concerned with archipelagic problems.

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

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(Mr. Dudgeon, United Kingdom)

delegation had submitted a draft article on the rights and duties of archipelagic States (A/AC.138/SC.II/L.44) 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 document A/AC.138/SC.II/L.44 as one of the main trends of opinion of the Conference.

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.

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.

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(Mr. Uzunov, Bulgaria)

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.

His delegation would be submitting specific proposals amending document A/CONF.62/C.2/L.49. The five main points of the amendment would be: (1) a definition of an archipelagic State; (2) the extent of archipelagic States' sovereignty; (3) the obligations of archipelagic States to allow free passage through archipelagic straits and other areas of archipelagic waters; (4) the obligations of vessels passing through archipelagic waters; (5) the obligation of archipelagic States not to impede shipping.

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.

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 was recognized in the 1958 Geneva Convention on the Territorial Sea. 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.

In such cases, the precise methods, used to fix straight baselines, as set out in the 1958 Convention, could hardly be applied, but the Committee was dealing with

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(Mr. Riphagen, Netherlands)

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 (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.

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 articles 4 (5) and 5 (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.

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.

His delegation was aware of the difficulties involved in giving effect to that status without infringing the legitimate interests of other States. In document A/AC.138/SC.II/L.15, which had been submitted to the Sea-Bed Committee, 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.

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.

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(Mr. Nandan, Fiji)

Accordingly, the draft articles embodied in document A/AC.138/SC.II/L.48 had been submitted to the Committee by Fiji, Indonesia, Mauritius and the Philippines as a tentative basis for discussion.

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.

The sponsors had been criticized in the past for a lack of objectivity in formulating the rules for passage through archipelagic waters. In the present 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 sealanes 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.

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 sealanes 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 passage States. The draft articles in document A/CONF.62/C.2/L.49 sought to reconcile those conflicting interests.

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.

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

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(Mr. Nandan, Fiji)

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.

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 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.

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 co-sponsoring the document.

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 Lakshadweep. India's other islands were located within its territorial waters or scattered through the Bay of Bengal and the Arabian Sea.

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.

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: (a) that the body of water which was enclosed by drawing straight baselines joining the outermost points of the outermost islands

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(Mr. Fraser, India)

constituting an archipelago should be reasonable; (b) that the channels of navigation traditionally used by international shipping, where the right of free transit had hitherto been exercised, should be respected; (c) that the principle should apply to the Andaman and Nicobar Islands and also to the Lakshadweep Islands.

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 the working 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.

If the provisions of document A/CONF.62/L.4 were adopted, international law would cover three types of archipelagos: (a) archipelagos which constituted a fringe of islands along the coast of the State; (b) archipelagos which cons ituted a single archipelagic State; (c) out-lying archipelagos which constituted an integral part of a coastal State.

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.

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.

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(Mr. Jeannel, France)

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.

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.

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.

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 would use the term to refer not 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.

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.

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 felt it necessary to recognize the

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(Mr. Herrera Caceres, Honduras)

geographical, political and economic unity of that archipelago by giving it legal status, and in the area where it 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.

His delegation believed that the provision of article 5 of the Geneva Convention on the Territorial Sea - 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 principal feature and was therefore unacceptable to his delegation.

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.

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 nature from the traditional right of innocent passage through the territorial sea.

The question had come up again at the 1958 Geneva Conference, 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 internal waters where no such right existed. Other delegations had maintained that a distinction based on whether or

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(Mr. Herrera Caceres, Honduras)

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.

Honduras believed that that provision was res inter alios acta, and that it tended in its present 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 archipelagic 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.

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.

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.

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(Mr. Tolentino, Philippines)

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. 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. 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. Thirdly, although the archipelagic State might restrict innocent passage of foreign ships through the archipelagic waters to the sealanes designated by it, if it did not establish such sealanes, then the entire archipelagic waters would be open to innocent passage of foreign ships. Fourthly, in designating sealanes, 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. 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 subject matters listed in paragraph 6 of article 5, thereby preventing the possibility of surprise to the maritime community. 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.

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(Mr. Tolentino, Philippines)

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.

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.

Unlike the 1958 Conference which had worked on the basis of an almost entirely juristic draft prepared by the International Law Commission, the present 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.

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.

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(Mr. Panupong, Thailand)

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.

There were basic differences between the concept of archipelagic States and that of non-State archipelagos. Firstly, 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.

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.

The application of the new concept, as originally introduced by Fiji, Indonesia, Mauritius and the Philippines, would create a situation affecting neighbouring countries, such as Thailand, which were enclosed by waters of archipelagic States. Firstly, 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 sealanes. 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 sealanes 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/...

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the living resources in those areas should be agreed upon between the countries concerned within the framework of regional or, if necessary, bilateral arrangements.

Owing to its special geographical position and to its substantial economy 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.

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.

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.

Mr. STEWART (Bahamas) said that his delegation, as expressed by its Minister for Foreign Affairs in the Plenary, 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.

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.

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(Mr. Stewart, Bahamas)

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.

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.

His delegation could accept a system which allowed the drawing of the baseline to and from low-tide elevations, lighthouses and other natural features of the political entity irrespective of the length of such baselines.

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.

His delegation hoped that all participants of the Conference would be equally reasonable.

The meeting rose at 12.55 p.m.

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