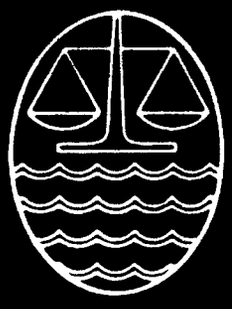


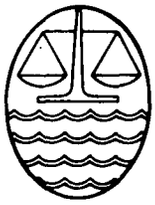
The Law of the Sea

Régime of Islands

Legislative History of Part VIII (Article 121)
of the United Nations Convention
on the Law of the Sea

...rice for Ocean Affairs and the Law of the Sea
United Nations

Office for Ocean Affairs and the Law of the Sea



The Law of the Sea

Régime of Islands

Legislative History
of Part VIII (Article 121)
of the United Nations Convention
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CONTENTS

RELEVANT PROVISION OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA PERTAINING TO THE REGIME OF ISLANDS: ARTICLE 121

"PART VIII

"REGIME OF ISLANDS

"Article 121

"Régime of islands

"1. An island is a naturally formed ~~area of land~~, surrounded by water, which is above water at high tide.

"2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.

"3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

INTRODUCTION

1. The Office for Ocean Affairs and the Law of the Sea is undertaking the preparation of a series of studies aimed at providing the legislative history of some of the provisions of the 1982 United Nations Convention on the Law of the Sea (hereinafter referred to as "the Convention"). These studies are being prepared for the purposes of facilitating a better understanding of the Convention and providing information for the use of Governments, United Nations specialized agencies, academic institutions and private individuals.

2. The régime of islands is dealt with in article 121 of the Convention. The purpose of the present study is to trace the evolution of this provision on the basis of, inter alia, the successive informal negotiating texts issued during the Third United Nations Conference on the Law of the Sea (hereinafter referred to as "the Conference"), taking account of the declarations, proposals, amendments and other relevant documents which led to the final text of the Convention.

3. The question concerning the status of islands had been raised in a number of international forums. For instance, at the Hague Conference for the regulation of North Sea Fisheries (1881) discussions focused on the types of insular formations which should be accorded fishery zones in the North Sea. Attempts were also made at the 1930 Hague Codification Conference to find a definition for an island. It was not however until the First United Nations Conference on the Law of the Sea in 1958 that a major step was taken to clarify the status of islands.

4. This matter was dealt with in the Convention on the Territorial Sea and the Contiguous Zone and in the Convention on the Continental Shelf, both signed in 1958. An island is defined therein as "a naturally-formed area of land, surrounded by waters, which is above water at high tide". An island generates its own territorial sea and continental shelf. Thus, under the régime of islands as reflected in the 1958 Geneva Convention on the Law of the Sea any insular formation which is above water at high tide possesses a territorial sea and a continental shelf.

5. The 1982 Convention has retained the definition of an island as "a naturally formed area of land, surrounded by water, which is above water at high tide" (article 121, paragraph 1). Islands generate their own territorial seas, contiguous zones, exclusive economic zones and continental shelves just like any other land territory (article 121, paragraph 2). However, rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf (article 121, paragraph 3). This is a significant modification to the régime of islands introduced by the 1982 Convention.

6. The régime of islands can be identified with two issues: (a) the allocation of maritime spaces to islands, and (b) the role of islands in the delimitation of maritime areas between States with opposite or adjacent coasts. The 1982 Convention, like its predecessor the 1958 Geneva Convention on the Law of the Sea, dealt with the question of the allocation of maritime spaces to islands. The question of the role of islands in the delimitation process was not expressly provided for, nor was any link made between provisions concerning the régime of islands and the delimitation provisions. State practice and the jurisprudence of judicial and arbitral tribunals are developing a body of law on the question of the role of islands in the delimitation process.

7. The present study consists of two parts. Part One focuses on the régime of islands as established by the 1958 Geneva Conventions and analyses chronologically the relevant work undertaken within the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction (hereinafter referred to as "the Sea-Bed Committee"). Part Two presents in chronological order the discussions held within the framework of the Conference and places emphasis on each of the successive negotiating texts issued during the 11 sessions of the Conference until the final adoption of the Convention in 1982.

Part One

THE 1958 GENEVA CONVENTIONS AND THE WORK OF THE SEA-BED COMMITTEE WITH REGARD TO THE REGIME OF ISLANDS

8. As far as the question of the régime of islands is concerned, the relevant work undertaken within the Third United Nations Conference on the Law of the Sea was facilitated by the preliminary activities of the Sea-Bed Committee, starting from 1971 (resolution 2750 C (XXV)), when it was acting as the preparatory organ of the Conference. For that reason, it appears appropriate to retrace the development which took place during the years of functioning of that Committee.

9. Before a detailed presentation of the work of that Committee, however, it should be noted that one of the early formulations of what is now known as the "régime of islands" can be traced to the 1956 Report of the International Law Commission. 1/ In that report, the following draft provisions and related commentaries are relevant:

"Islands

"Article 10

"Every island has its own territorial sea. An island is an area of land, surrounded by water, which in normal circumstances is permanently above high-water mark."

"Commentary

"(1) This article applies both to islands situated in the high seas and to islands situated in the territorial sea. In the case of the latter, their own territorial sea will partly coincide with the territorial sea of the mainland. The presence of the island will create a bulge in the outer limit of the territorial sea of the mainland. The same idea can be expressed in the following form: islands, wholly or partly situated in the territorial sea, shall be taken into consideration in determining the outer limit of the territorial sea.

"(2) An island is understood to be any area of land surrounded by water which, except in abnormal circumstances, is permanently above high-water mark. Consequently, the following are not considered islands and have no territorial sea:

"(i) Elevations which are above water at low tide only. Even if an installation is built on such an elevation and is itself permanently above water - a lighthouse, for example - the elevation is not an 'island' as understood in this article;

"(ii) Technical installations built on the sea-bed, such as installations used for the exploitation of the continental shelf (see article 71). The Commission nevertheless proposed that a safety zone around such installations should be recognized in view of their extreme vulnerability. It does not consider that a similar measure is required in the case of lighthouses.

"(3) The Commission had intended to follow up this article with a provision concerning groups of islands. Like The Hague Conference for the Codification of International Law of 1930, the Commission was unable to overcome the difficulties involved. The problem is singularly complicated by the different forms it takes in different archipelagos. The Commission was prevented from stating an opinion, not only by disagreement on the breadth of the territorial sea, but also by lack of technical information on the subject. It recognizes the importance of this question and hopes that if an international conference subsequently studies the proposed rules it will give attention to it.

"(4) The Commission points out, for purposes of information, that article 5 may be applicable to groups of islands lying off the coast."

"...

"Article 67

"For the purposes of these articles, the term 'continental shelf' is used as referring to the sea-bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres (approximately 100 fathoms) or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

"Commentary

"...

"(10) The term 'continental shelf' does not imply that it refers exclusively to continents in the current connotation of that word. It also covers the submarine areas contiguous to islands.

"..."

10. These drafts were taken up for consideration at the First United Nations Conference on the Law of the Sea in 1958 and were finally consolidated as follows:

(a) The Convention on Territorial Sea and Contiguous Zone, article 10:

"1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

"2. The territorial sea of an island is measured in accordance with the provisions of these articles."

(b) The Convention on the Continental Shelf, article 1 (b):

"For the purpose of these articles, the term 'continental shelf' is used as referring:

"[(a) To the sea-bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas;]

"(b) To the sea-bed and subsoil of similar submarine areas adjacent to the coasts of islands."

11. These two provisions constituted the main legal background on the basis of which the Sea-Bed Committee initiated its relevant work on the régime of islands. With respect to these two provisions, it can be briefly observed that:

(a) In both cases, the question of the régime of islands was not dealt with directly but in the context of the régimes of the territorial sea and of the continental shelf;

(b) The definition given in article 10 (1) is of a broad nature and gives the same status to all islands regardless of, for example, their size, their geological characteristics, their population or the economic life that they sustain.

12. No major development relating to the régime of islands was observed in the Sea-Bed Committee until 1971. At its spring session, in March 1971 when it became the preparatory organ of the Conference, the Sea-Bed Committee decided to set up three sub-committees of the whole to deal with a series of subjects and functions in accordance with its mandate as defined in General Assembly resolution 2750 C (XXV) of 17 December 1970. Sub-Committee II was entrusted with the following subjects and functions:

"To prepare a comprehensive list of subjects and issues relating to the law of the sea, including those concerning the régime of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits) and contiguous zone, fishing and conservation of the living resources of the high seas (including the question of the preferential rights of coastal States) and to prepare draft treaty articles thereon. It is understood that the Sub-Committee may decide to draft articles before completing the comprehensive list of subjects and issues related to the law of the sea."

13. Although the discussions which took place in the Sea-Bed Committee and its subsidiary organs in 1971 focused mainly on the régime of the international sea-bed area and its resources, brief mention was also made of the régime of islands. In particular, "references were made to the special circumstances and interests, and the need to find solutions to the specific problems, of States such as island States". 2/ Two delegations made statements on behalf and at the request of the Governments of five developing South Pacific countries not members of the Committee whose Governments had

requested them to draw the attention of the Committee to the special importance of marine resources to the islands of the South Pacific. 3/ Emphasis was also placed on the need for taking into account the interests of all States, including island States. 4/ With regard to the question of the continental shelf, points were made "in connection with its limits, the criteria which should be taken into consideration to define such limits, the relevant sovereign rights of the coastal State, the special problems related to the continental shelf of certain islands ..." 5/ Turning to the subject matter of fisheries and conservation of the living resources of the sea, reference was made to "the exclusive and preferential rights of coastal States beyond the territorial sea, to exclusive fishery zones, economic zones, fishery management zones, preferential zones and, in that connection, to the question of such zones in relation to certain islands ..." 6/

14. A series of relevant draft treaty articles was also submitted during that period, in particular, a "draft ocean space treaty" submitted by Malta. 7/ In that draft, the following is especially noteworthy:

(a) "Part I (Ocean Space), chapter I (Definitions), article 1:

"...

"The term island is used as referring to a naturally formed area of land, surrounded by water, which is above water at high tide. 8/

"A low tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. 9/

"..."

(b) Part II (Coastal State jurisdiction in ocean space), Chapter IX (Limits), article 37:

"1. The jurisdiction of an island State or of an archipelago State extends to a belt of ocean space adjacent to the coast of the principal island or islands the breadth of which is 200 nautical miles. The principal island or islands shall be designated by the State concerned and notified to the competent organ of the International Ocean Space Institutions. In the event of disagreement with the designation made by the archipelago State any Contracting Party may submit the question to the International Maritime Court for adjudication.

"2. The jurisdiction over ocean space that may be claimed by a State by virtue of its sovereignty or control over islands, other than those referred to in paragraph one, shall be determined in a special convention."

(c) Part V (The International Ocean Space Institutions), Chapter XVI (Establishment and personality), article 90:

"1. The Institutions may accept from any State the transfer to their administration of reefs, sandbanks, or islands having less than 10,000 permanent inhabitants.

"2. Reefs, sandbanks, or islands transferred to the administration of the Institutions shall be used by the Institutions only for international community purposes, such as scientific stations, nature parks or preserves, etc.

"3. The Institutions shall not accept the transfer to their administration of inhabited islands without consulting the freely expressed wishes of the inhabitants and without being satisfied that there exists among the inhabitants no significant opposition to the transfer of administration.

"4. The Institutions shall not accept the transfer to their administration of inhabited islands when it might entail a substantial financial responsibility on the part of the Institutions or when it might involve the Institutions in a political dispute with a Member.

"5. The population of islands under the administration of the Institutions shall enjoy a full measure of self-government.

"6. The Institutions shall promote the economic, social and educational advancement of the inhabitants and shall endeavour to provide them with opportunities of employment.

"7. The inhabitants may petition any of the principal organs of the Institutions. Such petitions shall receive careful consideration.

"8. The inhabitants of islands under the administration of the Institutions may freely terminate their association with the Institutions on giving two years' notice." 10/

(d) Part V, chapter XX (The Assembly), article 101 (b):

"1. The Assembly shall approve upon recommendation of the Council:

"(b) The draft convention for the delimitation of the jurisdiction over ocean space which may be claimed by a State by virtue of its sovereignty or control over the islands referred to in article 37 (2) of this Convention".

(e) Part V, chapter XXII (The Council), article 131 (b):

"The Council shall submit to the Assembly with its recommendations within four years of the entry into force of the present Convention:

"(b) A draft convention for the delimitation of the jurisdiction over ocean space which may be claimed by a State by virtue of its sovereignty or control over the islands referred to in article 37 (2) of this Convention".

(f) Part V, chapter XXII, article 135:

"1. The Council shall submit to the Assembly for approval:

"(a) Agreements with any State concerning the transfer to the administrations of the Institutions of sandbanks, reefs or islands;

"(b) The basic norms governing the administration of inhabited islands."

(g) Part V, chapter XXVII (The Secretariat), article 165 (k):

"The General Secretary shall:

"(k) Administer under rules laid down by the appropriate organs of the Institutions any inhabited islands which may be transferred to the administration of the Institutions and any scientific stations, marine preserves or nature parks which may be established".

(h) Part V, chapter XXVIII A (Ocean Management and Development Commission), article 182 (9):

"9. (a) The Commission, in consultation with the Scientific and Technological Commission, shall prepare and submit to the Council for its consideration:

"(i) Draft agreements with any State concerning the transfer of the administration of the Institutions of sandbanks, reefs or islands;

"(ii) Draft basic norms concerning the administration of inhabited islands;

"(b) The Commission shall give instructions to the General Secretary on the administration of sandbanks, reefs and islands which may be transferred to the administration of the Institutions and shall supervise the administration thereof."

(i) Part V, chapter XXVIII C (Legal Commission), article 195 (3) (b):

"3. The Commission shall prepare and submit to the Council within two years of the entry into force of the present Convention:

"(b) A draft of the convention for the delimitation of the jurisdiction over ocean space that may be claimed by a State by virtue of its sovereignty or control over the islands referred to in article 37 (2) of this Convention."

15. At the meetings of Sub-Committee II held in 1971, an attempt was made to draw up a list of subjects and issues relating to the law of the sea. Among the proposals submitted thereto, 11/ mention should be made of a working paper submitted by Afghanistan, Algeria, Cameroon, Ceylon, Democratic Republic of the Congo, Ethiopia, Gabon, Ghana, India, Indonesia, Iran, Iraq, Ivory Coast, Kenya, Kuwait, Liberia, Libya, Madagascar, Malaysia, Mauritania, Mauritius, Morocco, Nigeria, Philippines, Singapore, Somalia, Sudan, Tunisia, United Arab Republic, United Republic of Tanzania, Yemen and Yugoslavia 12/ which among other subjects and issues refers to "régime of isolated islands in relations to zones of exclusive fishing jurisdiction" (item 5.1.5).

16. In 1972, in furtherance of the work undertaken in 1971, another attempt to draw up a list of subject-matters and issues was made. In addition to the proposal made in 1971, the Sub-Committee had before it a list of subjects and issues relating to the law of the sea to be submitted to the Conference on the Law of the Sea proposed by Algeria, Argentina, Brazil, Cameroon, Ceylon, Chile, China, Colombia, Congo, Cyprus, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Gabon, Ghana, Guatemala, Guyana, Iceland, India, Indonesia, Iran, Iraq, Ivory Coast, Jamaica, Kenya, Kuwait, Liberia, Libya, Madagascar, Malaysia, Mauritania, Mauritius, Mexico, Morocco, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Romania, Senegal, Sierra Leone, Somalia, Spain, Sudan, Trinidad and Tobago, Tunisia, United Republic of Tanzania, Uruguay, Venezuela, Yemen, Yugoslavia and Zaire. 13/ That list contains the following:

(a) Item "6.6.5. Régime of islands under foreign domination and control in relation to "zones of exclusive fishing jurisdiction":

(b) Item "18. Régime of islands: (a) under colonial dependence or foreign domination or control; or (b) under sovereignty of a foreign State and located in the continental shelf of another State in a different continent."

17. Subsequently, amendments to that document were submitted by, inter alia, the following delegations:

(a) Malta 14/:

(i) To reformulate item 15 (Archipelagos) to read as follows: "15. Archipelagos and islands";

(ii) To delete item 18.

(b) Greece and Italy 15/:

"Item 18 should be amended to read as follows:

"18. Régime of Islands".

(c) Afghanistan, Austria, Belgium, Bolivia, Hungary, Mali, Nepal and Zambia 16/:

"6.6.5. Régime of islands under foreign domination and control in relation to [zones of exclusive fishing jurisdiction] fishery zones".

(d) Turkey 17/:

(i) Under item 2 (Territorial sea), to add the following sub-items: "2.6 Islands"; "2.7 Delimitation of the territorial sea between adjacent or opposite States, including that of islands";

(ii) Under item 5 (Continental shelf), to replace the existing text of item 5.3 (Question of the delimitation between States) by the following: "5.3 Delimitation of the continental shelf between adjacent or opposite States, including that of islands".

18. These documents were subject to intensive consultations, and on 18 August 1972 the Committee formally approved a "list of subjects and issues relating to the law of the sea" 18/ which "should serve as a framework for discussion and drafting of necessary articles". In relation to the régime of islands, the list contains the following two items:

(a) Item "6.6.5. Régime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction;"

(b) Item "19. Régime of islands:

"(a) Islands under colonial dependence or foreign domination or control;

"(b) Other related matters."

19. During the Sub-Committee's meetings in 1972, several delegations expressed their views on the question of the régime of islands. In particular, with regard to the exclusive economic zone beyond the territorial sea, the problem of the régime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction was raised. 19/ Furthermore:

(a) Reference was made to the various kinds of islands and to the criteria applicable to them such as their size, location, population, the marine space related to them in order to make a thorough study of the different situations which may arise. In particular, the régime of islands was referred to in connection with islands under colonial dependence or foreign domination or control or under the sovereignty of a State and located on the continental shelf of another State in a different continent. Islands were also mentioned in general as well as in specific contexts such as the territorial sea, the continental shelf and their delimitation, exclusive economic zone beyond the territorial sea and other related matters.

(b) Views were expressed by some delegations who emphasized the indivisibility of territorial sovereignty and jurisdiction and referred to the dangers inherent in drawing any distinction between islands according to their size, location, population and between island States, on the one hand, and islands under the jurisdiction of a State, on the other. Stress was furthermore laid on the non-existence of a generally recognized concept of continent or of continental shelf as well as on the unacceptability of putting forth notions which would apply to some continents and not to others.

(c) It was emphasized that the foregoing reference to islands in no way relates to island States. More particularly, with respect to the law of the sea, no distinction in the application of rules could be made between coastal States and island States.

(d) It was also stated that dependent island units maintain their inherent right, on attaining independence, to claim on a basis of equality all rights enjoyed by independent coastal States. 20/

20. At its 51st meeting, on 9 March 1973, the Sub-Committee decided to set up a working group of the whole which was entrusted with the task of undertaking a thorough examination of all draft articles introduced in the Sub-Committee or of documents submitted to it, and of studying and preparing draft articles for transmission to the Sub-Committee in order to help in preparing for the conference on the law of the sea.

21. During the Sub-Committee's meetings held in 1973, a number of delegations expressed their views on the question of the régime of islands. In particular:

(a) Reference was made to various principles for determining the maritime space of islands. It was stated that the principle for determining the territorial sea of islands and their continental shelf and zones of national jurisdiction should be the same as the principle for determining the territorial sea, continental shelf and zones of national jurisdiction of the continental or other part of the State of which the islands formed an integral part. In that connection reference was made to the applicability of the principles of median line of equidistance as well as to the principle of sovereign equality of States, of the indivisibility of sovereign integrity and its implications under international law and the Charter of the United Nations.

(b) It was also stated that no distinction whatsoever should be made between islands, irrespective of their size and population, and the continental land masses; and that the criteria relating to the delimitation of the territorial sea, the continental shelf, the exclusive economic zone or patrimonial sea and the matrimonial sea must apply to islands in the same way as they applied to continental land masses.

(c) It was also stated that the maritime spaces of certain types of islands, other than those island States and archipelagic States, should be determined by equitable principles taking into account special factors and circumstances such as their size, population and contiguity to the principal territory, whether or not they were situated on the continental shelf of another State, the physical, geological and geomorphological structure of the marine area involved, the general configuration of the respective coasts and the existence of islands or islets of another State.

(d) It was further stated that the existence of special circumstances and the consideration to be given to such circumstances did not prejudice the principle of the indivisibility of sovereignty of States but related merely to the determination of the maritime spaces of the islands concerned.

(e) Reference was also made to individual national interests, which had led to the idea of discriminating between islands and continental land masses, and it was stated that such interests could be satisfied without necessarily infringing in any way the fundamental principles of the equality of States and the indivisibility of their sovereignty.

(f) Mention was also made of the problems raised by the existence of islands, and particularly islets, in the maritime spaces to be delimited. It was argued in that connection that to treat islands, and particularly islets, on an equal footing with the actual coasts of States would have a distorting effect on the delimitation of maritime spaces. 21/

(g) More generally, the view was expressed that States exercising foreign domination and control over a territory should not be entitled to establish there an economic zone or to enjoy rights or privileges in such an area and with respect to such a territory. 22/

22. Among the documents submitted for consideration in 1973, mention should be made of the following:

(a) Declaration on Issues of the Law of the Sea, adopted by the Council of Ministers of the Organization of African Unity, Addis Ababa, 17-24 May 1973 (document A/AC.138/89 and Rev.1 of 2 July 1973). 23/

Attention is drawn to part B, paragraph 5, of that document:

> ["The Council of Ministers of the Organization of African Unity, meeting in its Twenty-first Ordinary Session in Addis Ababa, Ethiopia, from 17 to 24 May 1973,]
>
> ["DECLARES:]

"B

"REGIME OF ISLANDS

"5. That the African States recognize the need for a proper determination of the nature of maritime spaces of islands and recommend that such determination should be made according to equitable principles taking account of all relevant factors and special circumstances including:

"(a) The size of islands;

"(b) Their population or the absence thereof;

"(c) Their contiguity to the principal territory;

"(d) Their geological configuration;

"(e) The special interest of island States and archipelagic States."

Paragraph C of part 10 (Exclusive economic zone concept including exclusive fishery zone) also stipulates:

"That nothing in the propositions set herein should be construed as recognizing rights of territories under colonial, foreign or racist domination to the foregoing".

(b) Colombia, Mexico, Venezuela: draft articles of treaty (document A/AC.138/SC.II/L.21). 24/

"Article 13

"The term 'continental shelf' means:

"(a) The sea-bed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to the outer limits of the continental rise bordering on the ocean basin or abyssal floor;

"(b) The sea-bed and subsoil of analogous submarine regions adjacent to the coasts of islands."

(c) Uruguay: draft treaty articles on the territorial sea (document A/AC.138/SC.II/L.24 and Corr.1 and 2 of 3 July 1973). 25/

"Article 11

"Identical with article 10 of the Geneva Convention (islands).

"[1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

"2. The territorial sea of an island is measured in accordance with the provisions of these articles]."

(d) Malta: preliminary draft articles on the delimitation of coastal State jurisdiction in ocean space and on the rights and obligations of coastal States in the area under their jurisdiction (document A/AC.138/SC.II/L.28 of 17 July 1973). 26/

(i) Part I (Coastal state jurisdiction in ocean space), chapter I (Definitions), article 1:

"...

"An island is a naturally formed area of land, more than one square kilometre in area, surrounded by water, which is above water at high tide. 27/

"An islet is a naturally formed area of land, less than one square kilometre in area, surrounded by water, which is above water at high tide.

"A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide." 28/

(ii) Part I, chapter IV (Limits of national ocean space):

"Article 9

"Jurisdiction over ocean space may not be claimed by a State by virtue of sovereignty or control over:

"(a) Reefs and low-tide elevations, whether or not lighthouses or other installations have been built on them;

"(b) Islets;

"(c) Man-made islands of whatever size;

"(d) Fixed or floating installations of whatever nature, whether joined to the sea-bed or not;

"(e) Underwater installations or works of whatever nature.

"Article 10

"1. When reefs, low-tide elevations and islets are not situated within national ocean space, as defined in article 11, safety zones not exceeding 12 nautical miles in breadth may be established around such reefs, low-tide elevations and islets.

"2. When reefs, low-tide elevations and islets are situated within the national ocean space of a State other than the State exercising sovereignty or control over them, the breadth of the safety zones and the regulations to be observed within such zones shall be established by agreement between the States concerned. In the case of disagreement between the States concerned the matter shall be submitted to arbitration or to the International Maritime Court for binding adjudication.

"3. When the reefs, low-tide elevations and islets are not situated within the national ocean space of any State, the breadth of the safety zones and the regulations to be observed within such zones shall be established by agreement between the State exercising sovereignty or control and the international ocean space institutions. In the case of disagreement between the institutions and the State exercising sovereignty or control, the matter shall be submitted to arbitration or to the International Maritime Court for binding adjudication.

"4. The international ocean space institutions shall pay special regard to the interests of the State exercising sovereignty or control over reefs, islets and low-tide elevations in all matters relating to the uses of ocean space, including exploitation of natural resources, within the safety zones referred to in the foregoing paragraph.

"5. The State exercising sovereignty or control over reefs, low-tide elevations and islets has the obligation to erect and maintain on them lighthouses or other facilities designed to reduce dangers to navigation.

"Article 11

"1. The jurisdiction of a State may extend to a belt of ocean space adjacent to its coast, the breadth of which is 200 nautical miles measured from baselines drawn in accordance with the provisions of chapter III of this Convention.

"2. The jurisdiction of an island State or of an archipelago State may extend to a belt of ocean space adjacent to the coast of the principal island or islands, the breadth of which is 200 nautical miles measured from baselines drawn in accordance with the provisions of chapter III of this Convention. The principal island or islands of an archipelago State shall be designated by the State concerned and notified to the international ocean space institutions. In the event of disagreement with the designations made by the archipelago State any Contracting Party may submit the matter to the International Maritime Court for binding adjudication.

"3. When islands are less than 10 square kilometres in area, the jurisdiction of the State exercising sovereignty or control may extend only to a belt of ocean space, adjacent to the coasts of such an island, the breadth of which does not exceed 12 nautical miles measured from the applicable baseline.

"Special rules concerning atolls

"Article 12

"Atolls are a chain of islands or islets crowning a circular or oval reef which encloses a lagoon.

"...

"Article 14

"1. Jurisdiction over ocean space outside the area enclosed by the reef may not be claimed by a State by virtue of sovereignty or control over an atoll when the total land area of the islets crowning the reef does not exceed one square kilometre.

"2. When the islands or islets crowning the reef of an atoll have a total land area exceeding one square kilometre but less than 10 square kilometres, the jurisdiction of the State exercising sovereignty or control may extend to a belt of ocean space adjacent to the outer edge of the reef the breadth of which does not exceed 12 nautical miles.

"Article 15

"The extent of jurisdiction over ocean space which may be claimed by a State by virtue of sovereignty or control over islands and atolls other than those referred to in the foregoing articles of this chapter shall be determined in a special convention or conventions to be negotiated within the framework of the international ocean space institutions, taking into account all relevant circumstances.

"..."

(e) Greece: draft article under item 19, Régime of Islands (document A/AC.138/SC.II/L.29 and Corr. 1 and 2 of 26 July 1973. 29/

"1. An island is a naturally formed area of land surrounded by water which is above water at high tide.

"2. An island forms an integral part of the territory of the State to which it belongs. The territorial sovereignty over the island extends to its territorial waters, to the air space over the island and its territorial sea to its bed and subsoil and to its continental shelf for the purpose of exploring it and exploiting its natural resources.

"3. The territorial sea of the island is determined in accordance with the same provisions applicable for the measurements of the territorial sea of the continental part of the territory of the State.

"4. The provisions applicable for the determination of the continental shelf and the zones of national jurisdiction of the continental part of the State are as a general rule applicable to islands.

"5. The above provisions do not prejudice the régime of archipelagic islands."

(f) Tunisia, Turkey: amendment to draft article 13 of the text proposed by Colombia, Mexico and Venezuela [document A/AC.138/SC.II/L.21] (document A/AC.138/SC.II/L.33)(see subparagraph (b) above). 30/

"Delete subparagraph (b)"

(g) China: working paper on sea area within the limits of national jurisdiction (document A/AC.138/SC.II/L.34 of 16 July 1973). 31/

"1. Territorial Sea

"...

"(5) The breadth and limits of the territorial sea as defined by a coastal State are, in principle, applicable to the islands belonging to that State."

(h) Canada, India, Kenya, Sri Lanka: draft articles on fisheries (document A/AC.138/SC.II/L.38). 32/

"...

"Article 7

"No State excercising foreign domination or control over a territory shall be entitled to establish an exclusive fishery zone or to enjoy any other right or privilege referred to in these articles with respect to such territory."

(i) Algeria, Cameroon, Ghana, Ivory Coast, Kenya, Liberia, Madagascar, Mauritius, Senegal, Sierra Leone, Somalia, Sudan, Tunisia and United Republic of Tanzania: draft articles on exclusive economic zone (document A/AC.138/SC.II/L.40 and Corr. 1-3 of 16 July 1973). 33/

"Article XI

"No State exercising foreign domination and control over a territory shall be entitled to establish an economic zone or to enjoy any other right or privilege referred to in these articles with respect to such territory.

"Article XII

"Draft article under article 19, régime of islands

"1. Maritime spaces of islands shall be determined according to equitable principle taking into account all relevant factors and circumstances, including inter alia:

"(a) The size of islands;

"(b) The population or the absence thereof;

"(c) Their contiguity to the principal territory;

"(d) Whether or not they are situated on the continental shelf of another territory;

"(e) Their geological and geomorphological structure and configuration.

"2. Island States and the régime of archipelagic States as set out under the present Convention shall not be affected by this article."

(j) Cameroon, Kenya, Madagascar, Tunisia and Turkey: draft article under article 19, Régime of islands (document A/AC.138/SC.II/L.43). 34/

"1. Maritime spaces of islands shall be determined according to equitable principles, taking into account all relevant factors and circumstances including, inter alia:

"(a) The size of islands;

"(b) The population or the absence thereof;

"(c) Their contiguity to the principal territory;

"(d) Whether or not they are situated on the continental shelf of another territory;

"(e) Their geological and geomorphological structure and configuration.

"2. Island States and the régime of archipelagic States as set out under the present Convention shall not be affected by this article."

(k) Romania: working paper on certain specific aspects of the régime of islands in the context of delimitation of the marine spaces between neighbouring States (document A/AC.138/SC.II/L.53). 35/

"1. Islets and small islands, uninhabited and without economic life, which are situated on the continental shelf of the coast, do not possess any of the shelf or other marine space of the same nature.

"2. Such islands may have waters - of their own or forming part of the territorial sea of the coast - the extent of which shall be determined by agreement, taking into account all the circumstances affecting the maritime area concerned and all relevant geographical, geological and other features. The waters thus determined shall not, in any event, affect marine spaces which belong to the State or to neighbouring States."

(l) Variants submitted by delegations arranged under the heading and subheadings of the agreed list of subjects and issues relating to the law of the sea. Attention should be paid to, inter alia:

(i) "6.6.5 Régime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction.

"Variant A

"Article 11

"2. The jurisdiction of an island State or of an archipelago State may extend to a belt of ocean space adjacent to the coast of the principal island or islands, the breadth of which is 200 nautical miles measured from baselines drawn in accordance with the provisions of chapter III of this Convention. The principal island or islands of an archipelago State shall be designated by the State concerned and notified to the international institutions. In the event of disagreement with the designations made by the archipelago State, any Contracting Party may submit the matter to the International Maritime Court for binding adjudication.

"3. When islands are less than 10 square kilometres in area, the jurisdiction of the State exercising sovereignty or control may extend only to a belt of ocean space, adjacent to the coasts of such an island, the breadth of which does not exceed 12 nautical miles measured from the applicable baseline.

"..." 36/

(ii) "19. Régime of Islands

"Variant A

"Article ...

"1. Maritime spaces of islands shall be determined according to equitable principles, taking into account all relevant factors and circumstances including, inter alia:

"(a) The size of the islands;

"(b) The population or absence thereof;

"(c) Their contiguity to the principal territory;

"(d) Whether or not they are situated on the continental shelf of another territory;

"(e) Their geological and geomorphological structure and configuration.

"2. Island States and the régime of archipelagic States as set out under the present Convention shall not be affected by this article." 37/

23. The Sea-Bed Committee had in fact produced a large amount of documentation on the régime of islands in preparation for the work of the Third United Nations Conference on the Law of the Sea. In this respect, the declarations made by delegations and the proposals, variants and comparative texts submitted thereafter indicate that, although no formal agreement had yet been reached, a number of "main trends" had already emerged, in particular:

(a) As to the definition of an island, it was suggested to retain the definition given in the 1958 Convention on the Territorial Sea and the Contiguous Zone, article 10, paragraph 1;

(b) With regard to the delimitation of the maritime space of islands, it was proposed that as a "general rule", the same criteria applicable for the delimitation of the territorial sea and the continental shelf of continental land masses should also apply to islands;

(c) In the same manner as continental land masses, islands should also generate an exclusive economic zone or patrimonial sea of their own;

(d) In order to determine the relevant maritime space of islands, a series of criteria such as "the population or absence thereof" and the geomorphological structure and configuration (of such islands) should be taken into account. It was even suggested that certain categories of "islets and small islands" which were "uninhabited and without economic life" should not possess "any of the shelf or other marine space of the same nature". Nevertheless, under certain conditions, they might have "waters of their own".

24. All the suggestions mentioned above constituted the preliminary groundwork for the work of the Third United Nations Conference on the Law of the Sea on the specific question of the régime of islands. On 16 November 1973, the General Assembly adopted resolution 3067 (XXVIII) convening the first session of the Third United Nations Conference on the Law of the Sea, and dissolved the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction.

Part Two

THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA AND THE EVOLUTION OF THE NEGOTIATIONS RELATING TO THE REGIME OF ISLANDS

25. As mentioned above, the beginning of the work of the Conference on the question of the régime of islands was marked by the existence of a number of suggestions which had been put forward during the years of functioning of the Sea-Bed Committee. However, it should be emphasized that no formal agreement had yet been reached on any of these suggestions since the Sea-Bed Committee was entrusted only with the task of laying the groundwork for the Third United Nations Conference on the Law of the Sea. In submitting the proposals listed above, many delegations indicated clearly that such proposals could not, in any case, prejudice their final position on the matter. And even the "main trends" discussed earlier (see para. 23 above) were far from being agreed upon. For instance, some delegations pointed out that no distinction whatsoever should be made among islands, irrespective of, e.g., their size or population.

26. The second part of this study presents the negotiating texts issued throughout these sessions, in chronological order and in the light of the declarations, proposals, amendments and other documents relating thereto.

27. The first session of the Conference was devoted only to procedural matters such as the election of officers and the adoption of the rules of procedure. It was decided during that session that three main committees should be established in order to deal with, inter alia, the subjects allocated to the three Sub-Committees of the Sea-Bed Committee. The Second Committee, under the chairmanship of Mr. Aguilar (Venezuela), was entrusted with the task of carrying out the work undertaken by Sub-Committee II of the Sea-Bed Committee.

28. In view of the fact that most of the declarations and proposals on the régime of islands were made during the second session of the Conference, section I of this part of the study will be devoted to the second session and section II to the third and subsequent sessions.

I. SECOND SESSION

(Caracas, 20 June-29 August 1974)

29. One of the first issues on which the Conference had to take a decision was the organization of its work and the allocation of items among the plenary and its main committees. At its 15th meeting, on 21 June 1974, the Conference took a series of decisions on this matter. 38/ In particular, it was decided that:

(a) Immediately after the adoption of the rules of procedure, the Conference would begin hearing general statements made by delegations;

(b) Among other subjects and issues, the following items were allocated to the Second Committee:

(i) Item "6.6.5 Régime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction."

(ii) "Item 19 Régime of islands:

"(a) Islands under colonial dependence or foreign domination or control;

"(b) Other related matters."

30. During the plenary meeting, a number of delegations voiced in general terms their interest in finding a suitable régime for islands while others addressed certain particular issues relating thereto.

(a) The representative of Trinidad and Tobago indicated that, as an island State, Trinidad and Tobago had rejected in the Sea-Bed Committee proposals aimed at establishing a régime which would have discriminated against islands by curtailing their jurisdiction and their sovereignty over the ocean space adjacent to their coasts. That would continue to be its stand at the Conference. 39/

(b) The representative of Western Samoa stated that his delegation would oppose any suggestion or attempt to impose on island States a restrictive rule of ocean space delimitation based on factors relative to land areas or population. He further indicated that his country was so remote geographically that it was difficult to conceive of any jurisdiction except in terms of coastal State jurisdiction. And finally, his delegation believed that the establishment of a maximum 12-mile territorial sea was consistent with the practice of many countries, if not already a norm of current international law. A territorial sea of that extent, however, must be subject to the establishment of a broad 200-mile economic zone which was essential to the needs of a developing coastal State like Western Samoa. 40/

(c) The representative of Mauritania observed that, with respect to the States whose territory was divided by expanses of water, it was essential, for the safeguarding of their integrity and the full exercise of their sovereignty, that the expanses of water which divided their territory should be placed under their jurisdiction when the extent of those waters did not exceed a reasonable limit. That provision could not, of course, be applied to islands or groups of islands under the jurisdiction of a continental State and situated within the exclusive economic zone of that State. 41/

(d) The representative of India said that his country had over 1,280 islands, and would therefore be interested in evolving a suitable régime for islands. 42/

(e) The representative of Tonga made the point that, in considering the question of an international régime for the exploitation of the sea-bed beyond the continental shelf, the Conference would need to examine the question of excluding from the régime areas which could properly be reduced to sovereignty and did not constitute sea-bed in the ordinary sense of the term. The question was an aspect of the problem of the delimitation of the continental shelf, for if an island was considered to have a territorial sea, one must ask under what circumstances it would not have a continental shelf. 43/

(f) The representative of Democratic Yemen pointed out that Democratic Yemen recognized the right of coastal States to establish an exclusive economic zone not exceeding 200 nautical miles over which it enjoyed full sovereign rights of exploration and exploitation of its living and non-living resources, while respecting international navigation in and overflight of the zone and the laying of cables and pipelines in the zone provided that such activities did not in any way prejudice the States' legitimate interest in the zone. That principle should also be applied to the islands belonging to the coastal States. 44/

(g) The representative of Romania said that it was necessary to specify the sea spaces surrounding islands, especially the small uninhabited islets situated in maritime areas which must be delimited. On that subject, his delegation did not exclude the possibility that an island and even an islet might have a particular sea space, but wished it to be clearly laid down in the new regulations that islands, and especially islets, could not in every case be considered on the same footing as the actual coasts of a State. His idea was that the Convention should distinguish between islands and islets and give consideration to the fact that the latter should not be taken into account for purposes of delimiting the sea spaces between neighbouring States. 45/

(h) The representative of Denmark, recalling the statement by the representative of Western Samoa at the 25th meeting, indicated that he recognized the need for priority to be given to islands whose people were dependent on the exploitation of marine resources and hoped that the same consideration would be given to the people of Greenland and the Faroe Islands, in the new rules, as had been given in the 1958 Geneva Conference. 46/

(i) The representative of Nigeria made the point that the problem raised by islands was that they could historically and ethnologically form part of the territory of one State and, for the purpose of international law, fall within the territorial waters of another State. There was therefore a need to take similar measures to resolve any conflicts that might arise from such a situation. 47/

(j) The representative of the Netherlands said that the sea-bed and subsoil constituted a natural prolongation of the territories of all States, land-locked, coastal or island. He further indicated that it should be stressed that, on the question of limits, the island States should be treated on exactly the same footing as continental States. 48/

(k) The representative of the United Arab Emirates stated that the Conference was a landmark in the process of codification of the international law of the sea, which had begun in 1930 under the auspices of the League of Nations and that certain rules, such as the definition of islands, had become part of international law. 49/

(l) The reprensentative of Tunisia declared that the line of equidistance should not be the only means of delineating the exclusive economic zone between adjacent or opposite States. Tunisia would suggest instead a line of fair-sharing which would take into account all special circumstances and relevant criteria, whether geological, geographical or geo-morphological. The presence of islands in the region of demarcation was one of those special circumstances. The determination of the maritime space of islands should take into account the area of the island, its population, its contiguity to the principal territory, its geographical structure and configuration and the special interests of island States and archipelagic States. A growing number of delegations had expressed interest in that somewhat delicate problem, since if the relevant provisions of the 1958 Geneva Convention were retained, islands, reefs and atolls would be accorded the same maritime space as the continental masses of States. If the 200-mile exclusive economic zone were accepted and if an island was, as defined by the Geneva Convention on the Territorial Sea and the Contiguous Zone, a natural stretch of land surrounded by water which was exposed at high tide, vast maritime spaces and the resources they contained would automatically be assigned to islands, reefs and atolls, thus diminishing the content of the international zone. 50/

(m) The representative of France said that, since State sovereignty was indivisible, it was exercised in the same way over all the lands subject to it. It was not therefore possible to make a distinction between continental and insular territories. A sovereign State which was an island had the same right to a territorial sea as to its other territories. 51/

(n) The representative of Ireland indicated that he believed that all States were greatly interested in the question of islands and rocks, their precise definition and their effect on the delimitation of the maritime zones of specific interest and their equitable division between coastal States. 52/

(o) The representative of the Khmer Republic made the point that the 1958 Geneva Convention included some vaguely defined concepts, such as that of "island" in article 10 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. This complicated the application of rules on delimitation of the continental shelf. 53/

(p) The representative of Algeria pointed out that, as the question of the breadth of the zone of national jurisdiction and the nature of the rights to be exercised therein drew nearer to solution, the definition of the status of islands took on particular importance. Measures needed to be taken that would preclude already developed countries or those enjoying more than one seacoast from seriously injuring the interests of other countries, especially the least favoured from the economic point of view. 54/

(q) (i) The representative of Turkey remarked that islands were not all of equal importance; some were isolated in the oceans, others were situated at a reasonable distance from the territory of the State of which they were a part, while others again were far from that territory, resting on the continental shelf, or even in the territorial sea of another State, thus creating a source of friction between the States concerned. The interests of non-self-governing islands or islands under trusteeship should be guaranteed by appropriate arrangements of the International Authority, with due regard to relevant United Nations resolutions.

(ii) One of the major shortcomings of the 1958 Conventions was their failure to make adequate provision for seas and islands possessing special characteristics. The new convention had to remedy that shortcoming, especially in view of the fact that the enlarged territorial sea and the vast ocean spaces which would fall within national jurisdiction if the new concepts were approved would increase the dimensions of already existing problems and give rise to new ones.

The representative also felt that the Conference should give serious consideration to the case of closed and semi-closed seas and that of islands far from the principal territory which were situated in the economic zone, the territorial sea or on the continental shelf of third States. If all islands were to be treated alike or on an equal footing with the continental territories, the application of the various new norms which were envisaged to islands isolated in the vast ocean spaces would diminish the area destined to make up the common heritage of mankind. It was necessary therefore to avoid over-simplification under the pretext of seeking to work out rules of a general character which neglected the different categories of geographical situations.

(iii) With regard to the question of delimitation, another more important shortcoming of article 6 of the Convention on the Continental Shelf was its failure to define the term "special circumstances" precisely. Lawyers were agreed that islands should certainly fall under the heading of special circumstances. 55/

(r) The representative of Cyprus said that, as his country was an island State located between three continents, it was taking an active interest in two of the topics before the Conference: the position of islands, and the principle of the median line. Regarding the former, his delegation considered that no distinction whatsoever should be made between islands, irrespective of their size and population, and continental land masses; and that the principles for determining the territorial sea, the continental shelf and the economic zone should be exactly the same in the case of both islands and continental land masses. Cyprus was not prepared to accept any attempt at discrimination against islands in the form of artificial distinctions based on legally untenable considerations. Any deviation from the existing rule, as set out in the 1958 Geneva Conventions, should be in favour of islands, since, generally speaking, their populations depended on the resources of the marine environment for their development, and even their survival, to a greater extent than the populations of continental territories. 56/

(s) The representative of Italy declared that his country recognized the trend in favour of a territorial sea with a maximum limit of 12 nautical miles from the baseline of the territory over which the State exercised its sovereignty, without distinction between its continental and insular parts. Further, the approach followed in the Geneva Convention on the Continental Shelf was still valid, but the definition of the continental shelf given in that Convention must be revised. 57/

(t) The representative of New Zealand (Cook Islands) made the point that it would be unfair and inequitable to limit the size of his country's economic zone by reference to its land mass or population, both of which were very small by world standards; but the Cook Islands had been recognized as a self-governing country by the United Nations and on the principles of that body claimed treatment as the equal of much larger countries. He hoped that the Conference would pay special attention to small island countries. In appealing for recognition of their position, he included his neighbours in the Pacific, some of which were not directly represented at the Conference. Those countries, like his own, were dependent on the sea; it did not seem reasonable that they should also be deprived of the full benefits of an economic zone. 58/

31. Among the documents submitted to the Conference for its consideration during the second session, mention should be made of the following:

(a) Declaration of the Organization of African Unity on the issues of the Law of the Sea. 59/ Paragraph 8 (Régime of islands) of that document is particularly relevant (for text, see para. 22 above).

(b) Statement by the Chairman of the Joint Committee of the Congress of Micronesia submitted on behalf of the Congress by the United States of America, 60/ and circulated in accordance with the decision taken by the Conference at its 49th meeting. The following paragraphs are of particular relevance:

"Islands

"Suggestions have been made that, contrary to the equal treatment of islands under existing international law, small islands should be denied the benefits of a full economic zone. We have two kinds of islands in Micronesia: the so-called high islands, of volcanic origin, that stand frequently by themselves, and the so-called low islands of coral growth origin. The low islands are the surface portions of reef systems or atolls, enclosing a lagoon, and usually distributed at points around the lagoon. Almost all of our islands, however, whether high or low, are very small. For that reason, our people are all the more dependent upon and oriented to the sea. It is no exaggeration to say that Micronesians are not only especially dependent upon, but utterly dependent upon, the sea.

"Small islands which have no land resources to speak of need the benefits of an economic zone and the sea's resources within it more desperately than any other territories. It would not be equity to deny the sea's resources to those who need them most.

"Suggestions have also been made that uninhabited islands should not have a full economic zone. Almost all of our high islands, and almost all of our atolls, made up of low islands, are inhabited. But some islands are inhabited only part of the year, while others are used not as residences but for fishing or in some functional way other than for permanent habitation. They are all the same as vital a part of our economy and livelihood as some islands that may have permanent dwellings on them, but may have little or no fish resources near them. We do not believe that the criteria of inhabitation or size are practical or equitable.

"Our views on the subject of a full zone for islands have been expressed in the discussions in Committee II ably and eloquently by the distinguished representatives of Fiji, Tonga, Western Samoa, the Cook Islands, Papua New Guinea, New Zealand, Trinidad and Tobago and others. I shall not repeat their statements. But I do wish to quote briefly from the 1973 report of the Trusteeship Council to the Security Council of the United Nations, in which it took particular note of our situation. In its report to the Security Council, the Trusteeship Council said:

> "Because of the importance to Micronesia of marine resources, it is important that those resources in areas of Micronesian sovereignty be protected, and the Council wishes to emphasize the responsibility which the Administering Authority has for this protection."

"Territories under foreign domination

"A strong trend has developed in this Conference to prevent colonial or foreign dominating Powers from reaping the benefits of the economic zones of dependent territories under their control. We fully share the concerns of the sponsors of various proposals to this end. But we join our Pacific neighbours - Fiji, New Zealand, Tonga and Western Samoa - in feeling strongly that the equitable solution to this problem is to provide expressly in the convention that such politically disadvantaged territories shall be entitled to an economic zone, and that the rights and benefits of such zones shall belong to, and be exercisable only by, the inhabitants of such territories. Through any other approach, this Conference might be denying to dependent areas the very resources they most need to free themselves from that condition."

32. At its first meeting, on 3 July 1974, the Second Committee took a decision on the organization of the first stage of its work. 61/ It was decided, in particular, that:

> "The Committee should start by dealing with substantive questions ... towards the end of the general debate in the plenary Conference;
>
> "...

"The items allocated to the Committee should be considered one by one in the order in which they appear in the list contained in document A/CONF.62/29. The idea is to consider each of these items and questions and then to identify the main trends and to express these trends in generally acceptable formulae, in other words, to 'put the item on ice', without taking decisions, and to pass on to the following item. It is clearly understood that, during the discussion of each item, delegations may refer to related items. No decision will be taken until all the closely interconnected items have been fully considered;

"...

"The Committee should not take a formal decision on the documentation which will serve as a basis for its work. All the available documents - the documents of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, and any others that may have been submitted officially or informally, or which may be submitted during this session - may be used."

33. During that session, the following documents were submitted to the Second Committee for its consideration. The relevant portions dealing with régime of islands are presented below.

(a) Romania: draft articles on delimitation of marine and ocean space between adjacent and opposite neighbouring States and various aspects involved. 62/

"Article 2

"1. The delimitation of any marine or ocean space shall, in principle, be effected between the coasts proper of the neighbouring States, using as a basis the relevant points on the coasts or on the applicable baselines, so that the areas situated off the sea frontage of each State are attributed thereto.

"2. Islands which are situated in the maritime zones to be delimited shall be taken into consideration in the light of their size, their population or the absence thereof, their situation and their geographical configuration, as well as other relevant factors.

"3. Low-tide elevations, islets and islands that are similar to islets (of small size, uninhabited and without economic life) which are situated outside the territorial waters off the coasts and which constitute eminences on the continental shelf - whether lighthouses or other installations have been built on them or not - and man-made islands - regardless of their dimensions and characteristics - shall not be taken into consideration in the delimitation of marine or ocean space between neighbouring States.

"4. The naturally formed areas of land referred to in paragraph 3 may have around them or around some of their sectors maritime safety areas or even territorial waters, provided they do not affect marine spaces belonging to the coasts of neighbouring States.

"5. The provisions of the present article shall not be applicable to islands and to other naturally formed areas of land which constitute part of an island State or of an archipelagic State."

(b) Greece: draft articles. 63/

"Article 9

"Islands

"1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

"2. An island forms an integral part of the territory of the State to which it belongs. The territorial sovereignty over the island extends to its territorial sea, to the air space over the island and its territorial sea to its sea-bed and subsoil thereof and to its continental shelf for the purpose of exploring it and exploiting its natural resources.

"3. The maritime zones of the island are determined in accordance with the same provisions applicable to the measurements of the territorial sea of the continental part of the territory of the State.

"4. The above provisions do not prejudice the régime of archipelagic islands."

(c) Greece: draft articles on the continental shelf. 64/

"Article 2

"The provisions applicable for the determination of the continental shelf of a State are as a general rule applicable to its islands."

(d) Greece: draft articles on the exclusive economic zone beyond the territorial sea. 65/ The first draft article of that document appears to be relevant.

"Article ...

"The provisions applicable for the determination of the economic zone of a State are as a general rule applicable to its islands."

(e) Greece: draft articles on the régime of islands and other related matters. 66/

(i) The draft reads as follows:

"Article 1

"1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

"2. An island forms an integral part of the territory of the State to which it belongs.

"3. The foregoing provisions have application to all islands, including those comprised in an island State.

"Article 2

"1. The sovereignty and jurisdiction of a State extends to the maritime zones of its islands determined and delimited in accordance with the provisions of this Convention applicable to its land territory.

"2. The sovereignty over the island extends to its territorial sea, to the air space over the island and its territorial sea, to its sea-bed and the subsoil thereof and to the continental shelf for the purpose of exploring it and exploiting its natural resources.

"3. The island has a contiguous zone and an economic zone on the same basis as the continental territory, in accordance with the provisions of this Convention."

(ii) a. When introducing these draft articles, the representative of Greece declared that, with regard to item 19 (a), he supported the views expressed in document A/CONF.62/C.2/L.30. The intention of the draft articles submitted by his delegation was to secure for islands the same treatment, with regard to maritime zones, as for the continental territory. That view was also reflected in the draft articles in documents A/CONF.62/C.2/L.22, 25 and 32. That fundamental right of islands was universally accepted as a general rule under existing international customary and conventional law, subject, of course, to any adjustments agreed upon in bilateral or regional instruments.

b. Examining the validity of the claim of islands to possess a territorial sea equal in breadth to that of the continental territory of the State to which they belonged, he noted that the essential function of the concept of the territorial sea in law was to extend the national land territory over a certain limited maritime area, mainly for reasons of national defence and security. The territorial sea was thus the attribute of sovereignty over the territory and represented the maritime frontier of each State. Such a frontier was clearly essential, and in cases of adjacent or

opposite States special measures of delimitation, such as the median line, would apply. It would therefore, he felt, be proper, if not indispensable, to give islands the same right as continental territories to a territorial sea. Some representatives, however, rejected that view, claiming that islands should not be permitted to extend their territorial sea to a uniform breadth of 12 nautical miles in order not to infringe upon their neighbours' maritime zones; that practice, which was unfortunately being arbitrarily applied in some cases, meant that islands should allow the seas surrounding them to be explored and exploited by their continental neighbours.

c. Another fallacious argument had been put forward in connection with the question of the continental shelf, whereby islands were represented as having no shelf of their own. It should be borne in mind that continents and islands were part of the one earth crust, except for rare abnormalities, and therefore had a common shelf in nature and should have a common shelf in law as well.

d. The concept of the economic zone related directly to the economy of islands; it could not be denied that an island's economic life was sea-oriented, which meant that islands had a more pronounced need for maritime space. Some delegations, however, regarded islands as situated in the economic zone or on the continental shelf of other States, which implied that islands had no rights whatsoever. That reasoning could be reversed to prove that the opposite continental coast was situated in the economic zone of the island. It should be accepted that both islands and continental coasts did exist and were entitled to do so, unless they were invaded and their inhabitants bombed out or otherwise annihilated - which seemed to be the way of dealing with the problem in those days. To deprive islands of the rights accorded in to them under contemporary customary and conventional law and to try to apply various criteria to determine if they were eligible to be regarded as islands would reduce their status.

e. With regard to the question of definitions, he recalled that many representatives had stressed the need for clear-cut, unambiguous rules for defining archipelagos and archipelagic waters, and suggested that the same need was felt with regard to islands. The proposals before the Committee suggested a number of criteria all of which were arbitrary: some recommended that an island must be one tenth of the surface of the State to which it belonged, or account for one tenth of the total population, while others recommended that it should be no more than a certain distance from the State, and still others recommended a geological criterion. The general rule of the equality of islands and continental territories would, if such definitions were accepted, become the exception, while special circumstances might become the general rule if it was accepted that islands were by definition "special circumstances".

f. Speaking in more general terms, he noted that the basic trend of the Conference was towards a considerable enlargement of the authority of States over the seas. That was reflected in the establishment of the international area as the common heritage of mankind, in the extension of national jurisdiction over the economic zone, in the widening of the territorial sea to 12 nautical miles and in special arrangements for archipelagic waters. Very pertinent remarks had been made about the need for equal treatment for all parts of a State's territory in support of the idea that archipelagos, both oceanic and coastal, should be given more favourable treatment; he indeed saw no reason to distinguish between oceanic and coastal archipelagos since the geographical factors involved were the same. There was, moreover, a wide consensus that all States, including land-locked and other geographically disadvantaged countries, should work together as partners. It seemed odd that one part of the earth, islands, should not benefit from that trend and should even lose their rights under existing law and practice. He was not pleading for increased rights or special privileges for islands, but was simply proposing that insular populations should be on an equal footing with others and not deprived of their existing rights under international law. 67/

(f) Fiji, New Zealand, Tonga, Western Samoa: draft articles on islands and on territories under foreign domination or control. 68/

(i) The draft reads as follows:

"A. Islands

"1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

"2. Subject to paragraph 5 of this article, the territorial sea of an island is measured in accordance with the provisions of the Convention applicable to other land territory.

"3. The economic zone of an island and its continental shelf are determined in accordance with the provisions of this Convention applicable to other land territory.

"4. The foregoing provisions have application to all islands, including those comprised in an island State.

"5. In the case of atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea shall be the seaward edge of the reef, as shown on official charts.

"[These provisions are intended to be without prejudice to the question of the delimitation of island ocean space as between adjacent or opposite States, or in other special circumstances. Nor do they purport to deal with the régime of islands applicable to an archipelagic State or to the off-lying archipelago of a coastal State, or the case of a fringe of islands along a coast in its immediate vicinity referred to in article 4, paragraph 1, of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone].

"B. Territories under foreign domination or control

"In respect of a territory whose people have attained neither full independence nor some other self-governing status following an act of self-determination under the auspices of the United Nations, the rights to the resources of the economic zone created in respect of that territory and to the resources of its continental shelf are vested in the inhabitants of that territory to be exercised by them for their benefit and in accordance with their needs and requirements. Such rights may not be assumed, exercised or profited from or in any way infringed by a metropolitan or foreign Power administering or occupying that territory."

(ii) When introducing these drafts, the representative of New Zealand made the following declarations:

a. i. With respect to part A, he stated that it did not purport to deal with delimitation problems, archipelagos, or situations dealt with in article 4, paragraph 1, of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, but simply stated the general rule to be applied where that kind of problem did not arise. Paragraph 1 of the draft was based on article 10, paragraph 1, of the Convention. Paragraph 2 of the draft stated that every island generated a territorial sea, since the territorial sea was an attribute of State sovereignty over land territory, and no logical distinction could be drawn between sovereignty over islands and sovereignty over other territories.

ii. The same applied to the continental shelf: the sovereign rights which the coastal State exercised over the continental shelf for the purpose of exploring it and exploiting its natural resources were an attribute of its sovereignty over its land territory, whether mainland or island, of which the continental shelf formed the natural prolongation. Article 1 of the 1958 Geneva Convention on the Continental Shelf recognized explicitly that islands, no less than any other territory, might generate a continental shelf. Moreover, if, as was now the clear will of the Conference, the future convention on the law of the sea was to recognize the concept of an economic zone in which the coastal State would exercise sovereign rights over marine resources, there was no logical reason to distinguish between sovereign rights appertaining to islands and sovereign rights appertaining to other land territory.

iii. Those were the considerations on which the first four paragraphs of part A of the draft were based. An island was defined in the same terms as in the Convention on the Territorial Sea and the Contiguous Zone, and it was stated that an island had a territorial sea, an economic zone and a continental shelf on the same basis as any other land territory. The sponsors of the draft were aware that some representatives, who might accept the logic of that approach, would nevertheless be inclined to challenge the provisions on the ground that allocating a full quota of ocean space to islands would produce inequitable results. Such delegations should, however, consider whether it would be reasonable to legislate for the benefit of the 80 per cent of independent countries which did not constitute island States at the expense of the 20 per cent which did; whether depriving a very small mid-ocean island State of control over the fisheries resources in the 200-mile sea around it would be to the benefit of the international community as a whole or to the benefit of a few distant-water fishing countries; and, if a punitive rule should apply to a mid-ocean island State with limited land resources, located very far from the markets for its exports, what corresponding punitive rule should apply to a large continental country with rich land resources and access to an extensive area of sea and sea-bed and its considerable resources. His delegation had given careful consideration to the question whether the ocean space of certain categories of islands could be restricted in such a way as to do justice to all. If that were possible, mid-ocean island States should be the last category to be subject to such restriction.

iv. Paragraph 5 of part A of the draft was designed to fill a gap in the existing law concerning baselines for the territorial sea as that law applied to atolls and other island systems with the same features as atolls. An atoll made up a geographical and ecological entity. A lagoon, encompassed by a reef system, had all the characteristics of land-locked waters and constituted the principal source of food for the inhabitants of an atoll. To protect the resources upon which their well-being depended, the inhabitants must be able to control the lagoon. The sponsors of the draft therefore felt it to be entirely reasonable that the baseline for measuring the breadth of the territorial sea should be the seaward edge of the reef and not the seaward edge of the islands on the atoll.

b. With respect to part B, the representative of New Zealand stated that that provision took account of article XI of the 14-Power African proposal on the exclusive economic zone. The sponsors of the draft did not believe that the right solution to the problem was to deprive dependent territories of an economic zone and continental shelf or to place special restrictions on the size of the zone or shelf, as that could mean that the peoples of those territories, many of them small in land area and deficient in land-based resources, would not only be deprived of the potential wealth of the coastal sea-bed, but that their fisheries would be subject to uncontrolled exploitation by sophisticated distant-water fishing fleets. The economic consequences of such an approach on the South Pacific territories, with which his delegation was particularly concerned, would be very severe. The correct solution was to retain for a territory under colonial or foreign domination the same economic zone and continental shelf as for any other territory but to ensure that their resources would not be misused. The purpose of part B of the draft was therefore to impose on the metropolitan Power a formal and binding treaty obligation to that effect. The resources of the economic zone and continental shelf were to be vested in the inhabitants of the territory, to be exercised by them for their own benefit and in accordance with their own needs and requirements. The obligations created by that article should be as strict as any of the other obligations imposed by the new convention and should be subject to the same enforcement machinery. Any attempt by an administering Power to profit from or in any way infringe the rights vested in the inhabitants of a territory could be challenged before the tribunal for the settlement of disputes to be established under the new convention. 69/

(iii) a. Speaking on the same draft, the representative of Western Samoa said that, as one of the sponsors of that document, his delegation wished to draw attention to two of its provisions. First, article 3 in part A would insure that the economic zone of an island was determined in accordance with the provisions of the proposed convention applicable to other land territory. That was a fundamental equitable principle. The second provision - that set forth in part B - was intended to ensure that the rights to the resources of the economic zone created in respect of territories under foreign domination or control were vested in the inhabitants of those territories, to be exercised by them for their benefit and in accordance with their needs. 70/

b. He further indicated that, in one sense, that document was not innovative: its basic provisions were inspired by article 1 of the Convention on the Continental Shelf and article 10 of the Convention on the Territorial Sea and the Contiguous Zone. The same was not true of part B, in which for the first time a fair solution was provided for the special problems of those territories which had not yet attained full independence. His delegation considered that the resources in the economic zones of such territories must be preserved and was therefore heartened to see that part B of the document had been reflected as a main trend in Informal Working Paper No. 4.

c. The four sponsors were all States situated in the South Pacific, and their proposal reflected the problems and concerns characteristic of the region, as well as their ideas concerning the régime of islands in general. They had attempted to deal with the subject in a way which would not prejudice the interests of neighbouring countries. They were aware of the opposition expressed by some delegations to the idea of allocating a full area of ocean space to all islands, but they were anxious to avoid the inequities that could arise from a categorical delimitation of ocean space without due regard for the peculiar features and circumstances of oceanic islands. He wished to endorse the lucid arguments on that point presented by the representative of New Zealand.

d. Western Samoa was an island State in the South Pacific and comprised 10 separate islands, all of which were situated within its territorial limits. It therefore foresaw no great difficulties in its own case in respect of the allocation of ocean space. However, it sincerely believed that there were certain special factors that required careful consideration before any arbitrarily exclusive rule was introduced.

e. His delegation fully supported articles 2 and 3 of the draft articles on islands and on territories under foreign domination or control. For an island State such as his own, a rule of the kind presented in draft articles 2 and 3 was essential and must be included in the future convention. His delegation had therefore been reassured by the statements of a number of delegations to the effect that they did not think such a rule should present any difficulties. 71/

(iv) a. Referring to the same draft, the representative of Tonga said that his delegation had joined in sponsoring the document, which was designed to give islands the same territorial sea and economic zone as those to be given to other land territories. The 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone recognized the need for islands to have a territorial sea; their equal need for an exclusive economic zone should not be forgotten. With reference to part B of the document, it was his delegation's view that people of territories which had not attained complete independence but which were in all other respects self-governing should have the rights to the resources of an exclusive economic zone, provided that the benefits were used solely for the people of such territories. In addition, his delegation submitted that islands should have the right to the same ocean space, including the exclusive economic zone, as had other land territories; and it hoped that its view would be reflected in the working paper to be prepared by the officers of the Committee. 72/

b. He further added that the sponsors of the document had deemed it appropriate to make part B applicable to land territory as well as to insular territory. He pointed out that a number of islands in the Pacific Ocean had not yet attained full independence. The needs of the people in such territories for ocean space and resources were just as acute as the needs experienced by the populations in fully fledged States. Provided therefore that the resources of their ocean spaces were used solely for the benefit of their peoples and were not taken away by the metropolitan Power, his delegation saw no reason why such territories should not have the same area of ocean space as that accorded to States. That approach did not, he believed, conflict with the relevant principle in the Declaration of the Organization of African Unity or with article XI of the document submitted to the Sea-Bed Committee by 14 African States.

c. Part A of the draft articles constituted a natural extension of the 1958 Conventions on the Territorial Sea and the Contiguous Zone and on the Continental Shelf. A small mid-ocean island State, such as Tonga, with little land territory and few resources, would consider inequitable any arrangement whereby islands were not given the same economic zones as continental territories. The 1958 Conventions had recognized the right of islands to receive the same treatment as continental land masses in respect of ocean space. He therefore wished to commend to the Committee the paragraphs in part A of the document, which were intended to be without prejudice to the question of delimitation. 73/

(g) Romania: draft articles on definition of a régime applicable to islets and islands similar to islets. 74/

(i) The draft articles read as follows:

"Article 1

"1. An islet is a naturally formed elevation of land (or simply an eminence of the sea-bed) less than one square kilometre in area, surrounded by water, which is above water at high tide.

"2. An island similar to an islet is a naturally formed elevation of land (or simply an eminence of the sea-bed) surrounded by water, which is above water at high tide, which is more than one square kilometre but less than ... square kilometres in area, which is not or cannot be inhabited (permanently) or which does not or cannot have its own economic life.

"Article 2

"1. In principle, a State may not invoke the existence, in one of its maritime zones, of islets or islands similar to islets, as defined in article 1, for the purpose of extending the marine spaces which belong to its coasts.

"2. Where such elevations of land are situated along the coast of the same State, in immediate proximity thereto, they shall be taken into consideration, in accordance with the provisions of this Convention, for the purpose of establishing the baseline from which the breadth of the territorial sea is measured.

"3. Where an islet or island similar to an islet is situated in the territorial sea of the same State but very close to its outer limit, the State in question may reasonably extend its territorial waters seaward or establish an additional maritime zone for the protection of lighthouses or other installations on such islet or island. The additional zones thus established shall in no way affect the marine spaces belonging to the coasts of the neighbouring State or States.

"4. Islets or islands similar to islets which are situated beyond the territorial sea, on the continental shelf or in the economic zone of the same State, may have around them or around some of their sectors security areas or even territorial waters in so far as this is without prejudice to the marine spaces which belong to the coasts of the neighbouring State or States.

"Where such eminences of the sea-bed are situated very close to the outer limit of the continental shelf or of the economic zone, the extension of their security zones or their territorial waters shall be established by agreement with the neighbouring State or States, or, where appropriate, with the authority for the international zone, having regard to all relevant geographic, geological or other factors.

"Article 3

"The marine spaces of islets or islands similar to islets situated in the territorial sea, on the continental shelf or in the economic zone of another State shall be determined by agreement between the States concerned or by other means of pacific settlement used in international practice.

"The marine spaces of such elevations of land situated in the international zone of the sea-bed shall be established by agreement with the International Authority for that zone."

(ii) a. When introducing these draft articles, the representative of Romania stated that the question of islands had to be considered within the new parameters of the enlarged 12-mile territorial sea, the 200-mile economic zone and the concept of the common heritage of mankind. The régime established for islands would be a contributing factor in determining the extent of the international area in which coastal and land-locked States had an equal interest. The tremendous diversity among islands with regard to size, geographical situation, and economic and social importance gave some idea of the complexity of the problem for which generalized solutions along the lines of those adopted at the 1958 Geneva Conference would no longer be adequate.

The practice of States, customary law and international legal theory demonstrated widespread agreement on the need to distinguish clearly between islets and rocks on the one hand and islands proper on the other. Subjecting all types of islands to a single régime would produce unjust and inequitable results. Thus it was only natural that the Conference should establish a separate régime for the islets category [...].

b. With regard to the definitions in article 1 of the draft, the two criteria of area and economic and social viability should suffice to exclude certain elevations of land from the category of island. However, his delegation was receptive to any other criteria which might be proposed. The main purpose of articles 2 and 3 setting out the principal elements of a régime applicable to islets was to prevent any State from encroaching upon the marine zones of another State or the international area by invoking the existence of islets or islands similar to islets in one of its marine zones.

c. With regard to islets in close proximity to the coastal State to which they belonged, the solution proposed by his delegation was not new and had already been reflected in various texts proposed during consideration of the item on the territorial sea. His delegation considered that if such elevations of land were to be included within the baselines of the coastal State, they should be linked in some way with the continent or main territory and be situated in close proximity to the coast. Islets which were situated within the territorial sea of the main territory were already sufficiently protected by the fact that they were surrounded by waters under the complete sovereignty of the coastal State, and supplementary provisions were not necessary. In the case of islets situated near the outer limit of the territorial sea of the coastal State, the latter could extend its territorial waters seaward or establish an additional marine zone for the protection of lighthouses or other installations on condition that such action did not affect the marine space of neighbouring States.

d. With regard to islets situated beyond the territorial sea, on the continental shelf or in the economic zone of the same State, they were obviously not entitled to continental shelves or economic zones of their own. However, his delegation's draft articles provided the coastal State with the possibility of establishing security zones or even a territorial sea in so far as that was not prejudicial to the marine spaces of other States. For islets situated near the outer limit of the continental shelf or the economic zone, his delegation proposed that the breadth of the security zone or territorial waters of such islets should be established by agreement with neighbouring States or between the coastal State and the International Sea-Bed Authority to be entrusted with managing the international area.

e. The marine space of islets situated within the territorial sea or economic zone or on part of the continental shelf of another State should be determined by agreement between the States concerned or by any other method of peaceful settlement used in international practice. The inclusion of such provisions in the future convention would facilitate the resolution of the numerous and complex problems which arose in practice, especially with regard to the delimitation of marine space between neighbouring States. 75/

(h) Turkey: draft articles on the régime of islands. 76/

(i) The draft articles read as follows:

"Article 1

"(Definitions)

"Article 2

"Except where otherwise provided in this chapter, the marine spaces of islands are determined in accordance with the provisions of this Convention.

"Article 3

"1. No economic zone shall be established by any State which has dominion over or controls a foreign island in waters contiguous to that island.

"The inhabitants of such islands shall be entitled to create their economic zone at any time prior to or after attaining independence or self-rule. The right to the resources of such economic zone and to the resources of its continental shelf are vested in the inhabitants of that island to be exercised by them for their benefit and in accordance with their needs or requirements.

"In case the inhabitants of such islands do not create an economic zone, the Authority shall be entitled to explore and exploit such areas, bearing in mind the interests of the inhabitants.

"2. An island situated in the economic zone or on the continental shelf of other States shall have no economic zone or continental shelf of its own if it does not contain at least one tenth of the land area and population of the State to which it belongs.

"3. Islands without economic life and situated outside the territorial sea of a State shall have no marine space of their own.

"4. Rocks and low-tide elevations shall have no marine space of their own.

"Article 4

"A coastal State cannot claim rights based on the concept of the archipelago or archipelagic waters over a group of islands situated off its coasts.

"Article 5

"In areas of semi-enclosed seas, having special geographic characteristics, the maritime spaces of ~~islands~~ shall be determined jointly by the States of that area.

"Article 6

"The provisions of this chapter shall be applied without prejudice to the articles of this Convention relating to delimitation of marine spaces between countries with adjacent and or opposite coasts.

"Article 7

"For the purposes of this chapter the term 'marine space' implies either the territorial sea and/or continental shelf and/or the economic zone according to the context in which the term has been used."

(ii) When introducing these draft articles, the representative of Turkey stated that, although article 1 had been left blank, it was intended to draw attention to the fact that the future convention must include an article giving definitions. As the representative of Colombia had pointed out earlier in the meeting, the enigmatic definitions of the Geneva Convention must be clarified. Although his delegation had not pressed its proposal, first put forward in the Sea-Bed Committee, calling for a study of islands with standard definitions which would form the basis of the definitions in the convention, it was still convinced that such a study would be useful. Article 2 was not intended to deny the extension of a State's jurisdiction to islands; the question involved was the determination of the marine spaces of islands. Article 3 was an effort to establish criteria for the allocation of areas to islands, although he appreciated the difficulties in seeking objective and unambiguous criteria. Paragraph 1 of that article dealt with the situation of islands under foreign domination, bearing in mind that the inhabitants of such

islands must not be deprived of the resources of economic zones required to meet their economic and social needs. However, the inhabitants must decide for themselves. Paragraph 2 of article 3 took into account the delicate question of the islands of the continental shelf of his own country. Population and area ratios must be taken into account in allocating ocean space. Paragraph 3 of the article was based on the criterion of economic life. It had to be borne in mind that there were some islands which were without any form of economic or social life. In that connection he observed that navigation rights and military and police installations were not sufficient justification for establishing an economic zone. Paragraph 4 of article 3 followed the example of the Geneva Convention by denying marine space to rocks and low-tide elevations. 77/

(i) Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Libyan Arab Republic, Mexico, Morocco, Nicaragua, Panama, Paraguay, Peru, Uruguay: draft article on islands and other territories under colonial domination or foreign occupation. 78/

(i) The draft reads as follows:

"The rights recognized or established in this Convention shall not be invoked by the colonial or occupying Power in respect of islands and other territories under colonial domination or foreign occupation as long as that situation persists."

(ii) a. When introducing the draft, the representative of Argentina stated that its purpose was to ensure that, in pursuing its task of striving for a balance between the interests of States individually and of the international community as a whole in the law of the sea, the Conference did not include the interests of those who were trying to perpetuate illegal colonial domination or occupation of islands or territories. Those interests, which had been rejected by the majority of the international community, could affect both the territorial integrity of other States and the right to self-determination of subject peoples. The Conference should bear both those cases in mind, in order to prevent the colonial or occupying Powers from adding a new element to their illegitimate interests in the islands and territories in question.

b. There was clearly a majority trend in favour of extending the traditional jurisdiction of the coastal State recognized under the old law of the sea. Those who supported such an extension had stressed the essentially economic basis of their claims. They were mainly developing countries, concerned with the struggle against colonialism. It would be illogical to allow their maritime claims to be used by the colonial or occupying Powers as a further pretext for maintaining their domination or occupation over islands or territories that did not belong to them.

c. The wording of the draft made it clear that the colonial or occupying Powers should not enjoy the benefits derived from the convention at the expense of the needs and interests of the indigenous peoples of the islands or territories. That provision would not, of course, apply where the inhabitants were nationals or descendants of nationals of the colonial Power. In the case of foreign occupation of islands or territories belonging to another State, the draft would not deprive the latter State of its rights of maritime jurisdiction in respect of the occupied part of its territory. In short, the sponsors had sought to ensure that the draft article could not be misapplied so as to worsen the already grievous situation of peoples suffering under colonialism. The reference at the end of the draft article to the duration of colonial domination or foreign occupation would, he hoped, meet the concern of the representative of Trinidad and Tobago.

d. Although a number of other proposals had been submitted to the Conference, based on similar anti-colonialist principles, the representative of Argentina considered that the proposal he was introducing was the most satisfactory. The draft articles on the economic zone in document A/CONF.62/C.2/L.38 would deprive the colonial Power only of rights in the economic zone, whereas the draft article he was presenting deprived the colonial Power of all rights recognized or established by the future convention on the law of the sea.

e. The four-Power proposal 68/ was concerned with perhaps the most common situation, in which a colonial Power prevented the indigenous people from freely expressing their will with respect to independence, but not with the case of a territory which belonged to a certain State and was unlawfully occupied by another State. Moreover, while it deprived the metropolitan or foreign Power of rights over the resources of the economic zone and the continental shelf, it said nothing about other rights. The same applied to the proposals by Turkey. 76/

f. The Declaration of the Organization of African Unity (A/CONF.62/33) (see also para. 22, above) stipulated in its paragraph 10, section C, that 'nothing in the propositions set herein should be construed as recognizing rights of territories under colonial, foreign or racist domination to the foregoing', but section C concerned the exclusive economic zone and the provision could therefore be interpreted as referring only to the rights of the coastal State in that zone.

g. The draft article of which the delegation of Argentina was a sponsor was based on the principles of the United Nations Charter, on General Assembly resolution 1514 (XV) containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, on the work of the

Committee on decolonization and on the many regional declarations made by the Latin American countries in the same spirit as those of the African and Asian peoples. The representative of Argentina hoped that it would hasten the end of colonialism. 79/

(iii) With respect to the same draft, 78/ the representative of Uruguay declared that his delegation, as a sponsor, believed that a colonial or occupying Power could not validly invoke or exercise for its own benefit rights which belonged either to the sovereign State established when the colonial yoke was removed or to the sovereign State to which the occupied territory legitimately belonged. His delegation did not deny the rights which belonged to the territory as such, irrespective of whether it was occupied or under colonial domination. That was clearly reflected in the phrase 'as long as that situation persists'. However, those rights could not be exercised or invoked by those who were not entitled to them. To provide the contrary would be to allow those rights to be usurped. The new law of the sea should be based on principles of justice and respect for self-determination and sovereignty and could not serve directly or indirectly to consolidate unjust or unlawful situations." 80/

(iv) a. Speaking on the same document, the representative of Ecuador said that the draft, of which his delegation was also a sponsor, was so important that it could not fail to enlist the support of countries which believed in justice and in putting an end to the rule of force. It was inspired by concepts of liberty and independence and designed to ensure that the oppressive colonial Powers would find it increasingly difficult to continue along the path of exploitation and injustice.

b. The Conference was working to establish a just and equitable system of international co-operation which would make it possible to narrow the enormous gap between rich and poor countries. Despite the process of liberation from colonialist régimes and despite the Declaration on the Granting of Independence to Colonial Countries and Peoples, there were still territories, including territories in the Americas, occupied by foreign Powers. The rights laid down in the future convention must not be used by those Powers to maintain their hegemony and to perpetuate the injustices created for their exclusive benefit. Those rights existed in order to facilitate the development and progress of free peoples. In keeping with the new concepts which should underlie the convention, they legitimately belonged to the inhabitants of the territories.

c. The peoples of the world were moving ever more rapidly towards liberty and independence and towards a greater awareness of their rights and of the need to acquire or claim them. Certain Powers, on the other hand, were speaking of the need for a political realism which divided the world into two areas for the purpose of distributing the benefits gained through intimidation. Neither that kind of political realism nor the continuation of colonial régimes was acceptable to his delegation. What had to be recognized, instead, was the indomitable strength of the countries which were striving for a just law of the sea. It was blindness not to accept that reality and to draw the logical conclusions from it. 81/

(j) Algeria, Dahomey, Guinea, Ivory Coast, Liberia, Madagascar, Mali, Mauritania, Morocco, Sierra Leone, Sudan, Tunisia, Upper Volta, Zambia: draft articles on the régime of islands.* 82/

(i) The draft articles read as follows:

"Article 1

"1. An island is a vast naturally formed area of land, surrounded by water, which is above water at high tide.

"2. An islet is a smaller naturally formed area of land, surrounded by water, which is above water at high tide.

"3. A rock is a naturally formed rocky elevation of ground, surrounded by water, which is above water at high tide.

"4. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide.

"5. An island, islet, rock or a low-tide elevation are considered as adjacent when they are situated in proximity to the coasts of the State to which they belong.

"6. An island, islet, rock or a low-tide elevation are considered as non-adjacent when they are not situated in the proximity of the coasts of the State to which they belong.

"Article 2

"1. The baselines applicable to adjacent islands, islets, rocks and low-tide elevations, in accordance with article 1, are considered as the baselines applicable to the State to which they belong and consequently are used in the measurement of the marine spaces of that State.

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* At the 40th meeting of the Second Committee, on 14 August 1974, Ivory Coast requested to be included in the list of sponsors of the document.

"2. The marine spaces of islands considered non-adjacent, in accordance with paragraphs 1 and 6, shall be delimited on the basis of relevant factors taking into account equitable criteria.

"3. These equitable criteria should notably relate to:

"(a) The size of these naturally formed areas of land;

"(b) Their geographical configuration and their geological and geomorphological structure;

"(c) The needs and interests of the population living thereon;

"(d) The living conditions which prevent a permanent settlement of population;

"(e) Whether these islands are situated within, or in the proximity of, the marine space of another State.

"(f) Whether, due to their situation far from the coast, they may influence the equity of the delimitation;

"4. A State cannot claim jurisdiction over the marine space by virtue of the sovereignty or control which it exercises over an islet, rock or low-tide elevation as defined in paragraphs 2, 3, 4 and 6 of article 1.

"5. In accordance with paragraph 4 of this article, safety zones of reasonable breadth may nevertheless be established around such islets, rocks or low-tide elevations.

"Article 3

"1. In accordance with the provisions of article 1, paragraph 6, and article 2, paragraphs 2 and 3, the delimitation of the marine spaces between adjacent and/or opposite States must be done, in the case of presence of islands, by agreement between them according to principles of equity, the median or equidistance line not being the only method of delimitation.

"2. For this purpose, special account should be taken of geological and geomorphological criteria, as well as of all other special circumstances.

"Article 4

"1. The provisions of articles 1 and 2 shall not apply either to insular or to archipelagic States.

"2. A coastal State cannot claim rights based on the concept of archipelago or archipelagic waters by reason of its exercise of sovereignty or control over a group of islands situated off its coasts.

"Article 5

"Concerning islands under colonial domination, racist régime or foreign occupation, the rights to the maritime spaces and to the resources thereof belong to the inhabitants of those islands and must profit only their own development.

"No colonial or foreign or racist Power which administers or occupies those islands shall exercise those rights, profit from them or in any way infringe upon them."

(ii) In introducing these draft articles, the representative of Tunisia stated that articles 1 and 2 defined as accurately as possible the size of the different areas and the elevations of land, their degree of proximity to the coast and the various factors that should be taken into account for the purposes of delimitation. The provisions of article 3 would ensure that non-adjacent islands were not used for delimitation between adjacent or opposite States. That principle was in line with the provisions of the draft article on the delimitation of the continental shelf or the exclusive economic zone submitted by Kenya and Tunisia (A/CONF.62/C.2/L.28). Under article 4, the provisions of articles 1 and 2 would not apply to insular or archipelagic States, and a coastal State would not be entitled to claim rights based on the controversial concept of archipelagos by reason of its exercise of sovereignty over a group of islands situated off its coasts. Article 5, which concerned islands under colonial domination or foreign occupation, provided that the rights to the maritime spaces and to the resources thereof belonged to the inhabitants of those islands and must profit only their own development. 83/

(iii) With respect to the same draft articles, the representative of Mauritius said that article 5 gave concrete form to paragraph 10 of the Declaration of the Organization of African Unity, and was very similar to part B of document A/CONF.62/C.2/L.30 (see para. 33 (f) above); 68/ it would ensure that the resources of islands under colonial domination or foreign occupation were vested in the inhabitants of such islands. In the case of inhabitants who had been displaced - a situation not provided for in that article - his delegation considered that their rights should not be affected by their displacement. 84/

(k) Uruguay: draft article on the régime of islands. 85/

"The sovereignty of a State extends to the maritime zones adjacent to its islands determined and delimited in accordance with the provisions of this Convention applicable to its land territory, as well as to the air space over those zones, the sea-bed and subsoil thereof and the continental shelf."

34. Although many delegations already took positions on the issue of régime of islands at the plenary meetings, it was essentially within the Second Committee that they developed or expressed their point of view on the matter.

(a) Under item 6.6.5, entitled "Régime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction":

(i) a. The representative of New Zealand said that his country had for some years firmly supported the concept of a 200-mile economic zone and that such support was motivated by the same special concern that had been expressed by the South Pacific island States. He further recalled that the suggestion had been advanced in the Sea-Bed Committee, and repeated by one delegate in a plenary meeting, that there should be a restriction on the ocean space and, in particular, on the economic zone of islands. The New Zealand delegation assumed that such a suggestion had been made, for the most part, in the context of the special delimitation problems affecting islands in enclosed or semi-enclosed seas. If, however, a broader principle had been intended, his delegation had the strongest objection to it. The application of such a principle would doubly penalize the island countries of the Pacific, already inhibited by geographical remoteness and suffering difficulties with resources and marketing, by withdrawing from them the benefits of a proper economic zone. His delegation was also sure that most delegations had serious misgivings about the thought of varying the attributes of State sovereignty with regard either to the territorial sea or the economic zone according to a calculation of the size of a State, its population or other factors. No such discrimination was envisaged in existing international law as contained in the 1958 Geneva Conventions. New Zealand, with other States, had sponsored a set of draft articles 68/ which preserved the entitlement of island States and islands generally to the same territorial sea and economic zone to be fixed for other land territory. It was essential that no doubt should be cast on the principle of equitable treatment of all types of land territory.

b. The representative indicated further that agreement on the economic zone would not be possible unless adequate provision was made to ensure that, as envisaged in the Declaration of the Organization of African Unity adopted at Addis Ababa in 1973 and at Mogadiscio in 1974, 59/ the rights to an economic zone would not be used for the exploitation of those territories still remaining under colonial or foreign domination. Not much progress had been made to date in translating that worthwhile idea into exact treaty language. It was, of course, difficult to do so without running the risk of affecting the rights of territories which did not in fact fall into the particular category in question. A formula could be found, however, to ensure that, in respect of a territory which had neither full independence nor some other self-governing status, achieved after an act of self-determination under the auspices of the United Nations, the rights to the resources of an economic zone created in respect of that territory and to its continental shelf were vested in the inhabitants of the territory, to be exercised by them for their benefit and in accordance with their needs and requirements. It should also be made clear that such rights could not be exercised, profited from or in any way infringed by a metropolitan or foreign Power administering or occupying such a territory. The New Zealand delegation, together with Fiji, Tonga, and Western Samoa, had accordingly submitted a draft article on that subject 68/ which might best be considered under agenda item 19, on the régime of islands. 86/

(ii) The representative of Madagascar stated that the principles of equity should govern the establishment of a special régime for small islands, account being taken of their surface, population, contiguity to the principal territory and geological structure. Sovereignty over uninhabited islands could serve only as a pretext to further the selfish interests of States, whether individual or collective. 87/

(iii) The representative of Cyprus indicated that his country supported the concept of the exclusive economic zone as expressed in the Declaration adopted at the Fourth Conference of Heads of State or Government of Non-Aligned Countries, held in Algiers from 5 to 9 September 1974, of which it was a signatory. However, its support was subject to two stipulations, one of which was that islands should be in the same position as continental territories and should therefore be entitled to the same rights as other territories in respect of the exclusive economic zone. 88/

(iv) The representative of Greece stated that, in the view of his delegation, islands were as much a part of the territory of a State as its principal territory, and were therefore entitled to the same treatment under international law. As the representative of New Zealand had pointed out, they should not be penalized for being islands. 89/

(v) The representative of Western Samoa pointed out that his delegation had noted with concern the suggestion to limit the ocean space entitlement of islands, including their economic zone, on the basis of criteria of land area and population. Like other delegations from the South Pacific, his delegation assumed that such a suggestion had limited and special application and would find universal application of such a rule completely unacceptable. Not only would it ignore the special characteristics of oceanic islands, it would also deny to countries like Western Samoa full State sovereignty. As the representative of New Zealand had pointed out, such a rule would unfairly penalize island countries in the Pacific and would constitute a discriminatory act not envisaged in international law. 90/

(vi) The representative of Thailand said that his delegation wondered whether the concept of a 200-mile economic zone would be applied to islands such as mid-ocean islands, regardless of size. Furthermore, while some delegations had stated that the concept would not apply to territories under foreign domination, his delegation wondered what generally applicable criterion would distinguish between islands with dependency status and those forming part of a given territory. His delegation looked forward to receiving clarifications on all those problems in order to determine its final positions. 91/

(vii) The representative of Romania indicated that his delegation's proposals on islands and islets also referred to the delimitation between neighbouring States. That did not mean, however, that it it did not agree with the proposals in the Declaration of the Organization of African Unity and other documents of the Conference which stated that islands and islets came under a different régime. Island States had nothing to fear because all the proposals concerning the régime for islands took their particular interests into account. His delegation agreed entirely with what the representative of Madagascar had said at the 22nd meeting regarding islets and uninhabited islands, and it believed that its proposals concerning that category of land extension would be better dealt with in the context of the economic zone, which could be extended to 200 miles. 92/

(viii) The representative of Italy said that the draft articles in document A/CONF.62/C.2/L.18 (see para. 33 (a) above) 62/ appeared to maintain what was to his delegation an unacceptable position. 93/

(ix) The representative of Tunisia was of the view that island States should have the same rights as continental States. In the case of other islands, and where there was a problem of overlapping of economic zones, the median line should not necessarily be the only method of delimitation. Further study was needed in the case of islands and islets, which should not automatically have the same exclusive economic zones as island States. In that connection, he referred to the 14-Power draft articles submitted in 1973, 33/ article XII of which set forth criteria for determining the economic zone of islands. He also drew attention to document A/CONF.62/C.2/L.28, sponsored by his delegation, which dealt with the delimitation of the exclusive economic zone between adjacent and opposite States. 94/

(b) Under item 19 (Régime of islands ...):

(i) a. The representative of Denmark indicated that the Geneva Conventions of 1958 contained two articles of special importance for the question of islands, namely article 10 of the Convention on the Territorial Sea and the Contiguous Zone and article 1 (b) of the Convention on the Continental Shelf. His delegation was glad to see that the principles embodied in those articles were faithfully reflected in paragraphs 1, 2 and 3 of document A/CONF.62/C.2/L.30 (see para. 33 (f) above), 68/ for the following reasons.

b. If an island was an independent State, it should not be in a less favourable position than a continental State, and, if an island had not yet achieved its independence, it should be accorded the same treatment as other islands in order not to prejudice its rights when it became independent. Furthermore, the special economic and social characteristics of islands must be taken into account because their populations were frequently isolated and had few alternative employment opportunities. Accordingly, at least the same rights should be granted to islands as to continental territories.

c. The delimitation of island ocean space or sea-bed area in the case of adjacent or opposite States should continue to be based, generally speaking, on the clear-cut equidistance principle. His delegation therefore supported the provisions on that subject contained in documents A/CONF.62/C.2/L.25 (see para. 33 (c) above)) 64/ and L.31 (Japan: draft article on the continental shelf).

d. If the Conference decided to grant coastal States extensive rights in the form of broad exclusive economic zones, then consideration should be given to the question of to what extent, if at all, those zones could be claimed on the basis of the possession of islets and rocks which offered no real possibility for economic life and were situated far from the continental land mass. If such islets and rocks were to be given full ocean space, it might mean that the access of other countries to the exploitation of the living resources in what was at present the open sea would be curtailed, and that the area of the sea-bed falling under the proposed International Sea-Bed Authority would also be reduced. 95/

(ii) a. The representative of Colombia made the point that, on the question of islands, the Committee had before it only the same definition as that given in the Geneva Convention on the Territorial Sea and the Contiguous Zone, which was a broad and generic definition embracing such clearly different land formations as islands, islets, keys, reefs, etc. What purpose could such a definition serve in terms of the law of the sea? In other words, what significance did such a definition, ranging from an island State to a rocky headland, possess? Could all those formations conceivably be granted the same maritime space, and to the same extent, as appeared to be claimed for them?

b. Even at the Geneva Conference the comment had been made that, by that reasoning, a tiny island no larger than a pinhead, close to the African coast, could annex a large part of the Atlantic as its continental shelf. Logically, and in geographical terms, it would mean that any minor elevation could call itself an island. That trend of thinking, dating back to the Geneva Conference, was reflected in a number of the proposals submitted, for example, the one put forward by the United Republic of Cameroon, Kenya, Madagascar, Tunisia and Turkey in document A/AC.138/SC.II/L.43. 34/ There might perhaps be a case for establishing an organ to examine and evaluate the various "island" situations and to decide how they should be treated, the logical criterion being to assign maritime space on the basis of absolute equity.

c. The choice was either to accept that criterion or to amend radically the Geneva definition; in other words, either to define what was meant by "island", in the context of the convention, or to create specific categories of islands, which could be accorded appropriate maritime space. In any case, the new law of the sea should dispel the uncertainty bequeathed by the Geneva definition.

d. A detailed study of the above-mentioned points could lead to a concrete formulation of what was apparently already accepted State practice: treatment of an island as a separate entity having important functions, which must fulfil certain specific requirements. The island, as a component part of other entities, was or could be a less demanding concept. In the light of all these considerations, the existing Geneva definition of islands should be clarified and refined. 96/

(iii) The representative of Tonga indicated that his delegation was grateful for the assurances given by some delegations that the island States would be entitled to the same area of ocean space as continental territories on the principle of State sovereignty. However, he wished to emphasize that, in accordance with the principle of indivisibility of State sovereignty, all islands comprising the State must be treated alike and should have the same ocean space as other territories. 97/

(iv) a. The representative of Trinidad and Tobago said that in the Sea-Bed Committee his delegation had rejected proposals aimed at establishing a régime that sought to curtail the jurisdiction and sovereignty of islands over the ocean space adjacent to their coasts and was therefore discriminatory. His delegation had always had strong reservations regarding the inclusion of the item under discussion in the list of subjects and issues. Item 19 was a compromise, and discussions on it must be restricted to islands under colonial dependence or foreign domination or control and other related matters. General solutions for delimitation problems between islands and other territories, whether they were insular or continental, and general criteria for the delimitation of the ocean space of islands should not be discussed under that item. The only relevant question was whether islands under colonial dependence or foreign domination or control were entitled to the breadth of territorial sea, exclusive economic zone, continental shelf rights and the jurisdiction to be established by the Conference in a new convention on the law of the sea. His delegation believed that they were entitled to those rights and that, accordingly, the Conference should confer on such islands the same rights and benefits as it accorded to other territories or States. In the meantime, the United Nations had the obligation to expedite the decolonization of those islands, thus giving effect to the inalienable rights of colonized peoples to self-determination.

b. The very title of item 19 (a) - "Islands under colonial dependence of foreign domination or control" - discriminated against islands. Were there no continental territories that were still under colonial dependence or foreign domination or control? His delegation doubted that the proponents of the item intended to suggest that continental territories under the domination or control of metropolitan Powers should be treated differently from islands in a similar situation. The item should have been entitled "Territories under colonial dependence or foreign domination or control". Further, no solution - even partial - was to be found in the curtailment of the ocean space jurisdiction of territories under colonial dependence or foreign domination. If such a curtailment took place, his delegation wondered what the situation would be after a colonial territory had attained its independence. Would an adjacent or opposite State then reduce the area of its jurisdiction in order to accommodate equitably the rights and interests of the newly independent State with respect to ocean space? His delegation very much doubted that it would.

c. A real problem still existed for those territories still under colonial or foreign domination, particularly those that were islands whose population pressures forced them to depend to a large extent on the sea for their nutritional needs, recreation and economic development. The associated States and other colonial territories of the Caribbean, although not yet fully independent, were self-governing entities responsible for the welfare of their peoples. They were legitimately entitled to the same rights and benefits in ocean space as were to be accorded to continental States in any new convention on the law of the sea. His delegation would strongly oppose any attempt to discriminate against island territories. The Conference must establish no régime for islands that was prejudicial to their interests. On the contrary, islands should be given more favourable treatment than continental land masses with respect to their jurisdiction over ocean space.

d. His delegation was not referring to uninhabited rocks and cays in the middle of the seas and oceans that were under foreign domination or control Those rocks and cays were to be treated differently. Trinidad and Tobago supported the definition of islands contained in documents A/CONF.62/C.2/L.30 (see para. 33 (f)), 68/ and L.50 (see para. 33 (e)) 66/. On the other hand, it found the definition of islets in the Romanian proposal in document A/CONF.62/C.2/L.53 (see para. 33 (g)) 74/ quite arbitrary; the definition proposed therein did not say at what point an island similar to an islet would be distinguished from an island.

e. The proposals in document A/CONF.62/C.2/L.30, particularly in part A, met the concerns of his delegation to a large extent. His delegation believed that the criteria for the delimitation of ocean space between adjacent or opposite States must be the same for islands as for other land territories. Part B reflected a correct approach to the problem, and his delegation agreed that a colonial territory had a right to the resources of the territorial sea, the economic zone and continental shelf. That right was vested in the inhabitants of that territory and was to be exercised by them for their exclusive benefit. It should not be assumed, exercised, profited from or in any way infringed by a metropolitan or foreign Power administering or occupying the territory. 98/

(v) a. The delegation of Fiji referred to document A/CONF.62/C.2/L.30 and said that, although his country was primarily an archipelagic State, it also had three islands to which the draft articles should apply. Two of these islands were inhabited and the situation of their population was almost identical to that of the peoples of Tonga, the Cook Islands and Western Samoa. His delegation maintained that the peoples of such islands and the other small island territories of the South Pacific which were still dependent upon other States for their economic existence should enjoy the same territorial sea and economic zone as might be fixed for any other land territory. Indeed, because of their isolation and dependence on their surrounding waters, they had a special interest which should be reflected in the convention. His delegation supported the argument of Trinidad and Tobago that island States should receive special consideration.

b. The attempt to exclude uninhabited islands from the concept of the economic zone or even from having a territorial sea ran counter to article 10 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. To adopt any such proposals would be to impose an unjustifiable penalty on island States, particularly the small island territories of the South Pacific, all of which now enjoyed a territorial sea and contiguous zone around each of their islands and the right to explore and exploit the resources of the sea-bed and subsoil of the continental shelves of all their islands. No one had suggested that a continental State should be deprived of its sovereignty or economic rights in any of its uninhabited land areas.

c. There were several small island territories in the South Pacific which, while moving towards independence, were not yet sufficiently economically advanced to achieve that status. It was essential to the economic and political advancement of such territories that their peoples should enjoy full rights with regard to the economic zones and continental shelves belonging to their island territories. His delegation supported the

argument set forth in the draft articles he had mentioned that such rights should be vested in the inhabitants of the territories to be exercised by them for their exclusive benefit. It also supported the proposal that there should be an international obligation on any metropolitan or foreign Power which might be administering or occupying such territories to ensure that such rights were in no way assumed, exercised or profited from or in any way infringed by the administering Power. Such an arrangement would help the territories to advance more rapidly to complete political and economic independence. Any other solution would lay them open to the plundering of their rightful resources; their transition to independence would be delayed and when they finally achieved that status they would succeed only to the crumbs that had escaped the depredations of distant-water operators. 99/

(vi) a. The representative of Nicaragua was of the view that the future régime should guarantee the protection and defence of the economic interests of the peoples of islands or groups of islands which were completely separate from any continental formation or coastal State, whether such islands were occupied by a State or constituted, or were about to constitute, independent States, and regardless of their geo-morphological formation. The waters surrounding islands or groups of islands or archipelagos forming part of the continental shelf and therefore part of the territory of a coastal State, or islands situated within the 200-mile territorial sea or economic zone of a coastal State should be regarded as coastal State waters. Any disturbance of that logical order would be detrimental to the concept of the inherent rights of coastal States and must be rejected. Any benefit deriving from the rights established or recognized by the future convention should go to the coastal State of which such islands formed a natural part. Occupation of such islands by a State other than the coastal State of which they were a natural part or of whose economic zone they were an integral part gave rise to special difficulties which must be dealt with in a spirit of equality and justice. The future convention must not be made an instrument which allowed the colonizing Powers to benefit from their territorial conquests and annexations.

b. Referring to the islands which were of special interest to Nicaragua, he reiterated the views expressed by his delegation at the 16th meeting of the Committee. Additionally, the problem of islands assumed particular importance in the context of the delimitation of boundaries between States, and the concept of what constituted "opposite States" required clarification, particularly in the Caribbean. In order to avoid any ambiguity that might lead to more injustice, clear

criteria were needed. His delegation proposed the inclusion of the criterion of the direction and position of the coastline, in the case of non-adjacent States which shared a common continental shelf and were not separated by abyssal depths, and in the case of overlapping and continuous national zones measured from main coastlines which were less than 400 nautical miles apart.

c. The matter was serious in the case of the de facto occupation of islands by another State. Occupation by a State of territory situated more than 400 nautical miles from its borders and constituting part of the national zone of another State - particularly if the territorial stretch was discontinuous - was a different situation that should not be covered in the future convention. In such cases, the title of the occupying Power to the continental shelf or territorial sea of colonized islands or archipelagos could not be held more valid than that of the coastal State from whose continental shelf or national zone they were taken. That was a logical and just criterion. The provisions of the new convention should not be used to justify violation or occupation by a State of territory which under the terms of the same convention would constitute part of the national zone of a coastal State.

d. For the above-mentioned reasons as well as others relating to the particular situation in the Caribbean, his delegation had sponsored the draft article in document A/CONF.62/C.2/L.58 (see para. 33 (i)). 78/ Having studied the proposals submitted by other delegations on the item under consideration, his delegation was of the view that the proposals in that document had the advantage of containing precise provisions which stipulated that conquest and colonial domination should not benefit the aggressor strategically or economically. His delegation hoped that that basic principle would be strengthened by further proposals from other delegations. He trusted that it would not be necessary to make further reference to the matter. 100/

(vii) a. The representative of Canada observed that his delegation, which attached great importance to the question of islands, shared many of the views expressed by the representative of Trinidad and Tobago. A basic principle in previous conventions was that islands too had a territorial sea and continental shelf, and that principle should be retained in any future convention. The sovereignty of a State could not be determined by the size of its population.

b. It was true that islands required special consideration, and while rocks or islets could often be disregarded, if they were going to be taken into account at all small isolated islets should be treated as generously as mainland territories. His delegation acknowledged that sometimes such islets should be

given special treatment; it wondered, however, whether the Conference would be doing the correct thing in denying a mid-ocean rock or islet full jurisdiction over its 125,000-square-mile zone. Some islets were larger than many countries participating in the Conference and some islands were important to a State because of their historical links. Thus, while his delegation was in favour of the future convention providing for special circumstances, no arbitrary rules should be laid down. 101/

(viii) The representative of Turkey declared that there were three important points that had to be borne in mind: first, islands had differing structures; secondly, the marine areas being established by the Conference would have to take into account a régime for islands; and thirdly, attention had been drawn to the importance of ensuring that the international area, in other words the common heritage of mankind, was as large as possible. In view of those three points, there was a need to reconsider the whole issue of islands. Whereas the 1958 Conference had dealt with islands only in the limited context of the territorial sea, the current Conference would be dealing with very large marine areas. The maps and other materials available to members showed that the treatment to be accorded islands would cause large areas to cease to be part of the high seas, thereby reducing the extent of the common heritage of mankind. He therefore appealed to delegations that had reserved their position on the issue to reconsider their attitude in the light of new conditions. 102/

(ix) The representative of Singapore stated that the Conference must consider whether all islands must be treated in exactly the same way as other land territories and be accorded a right to establish economic zones. The rationale for the proposal that coastal States should have the right to establish an economic zone was essentially based upon the interests of the people and the desire to marshal the resources of ocean space for their development. His delegation accepted that rationale in principle and therefore believed that island States should be entitled to establish an economic zone in the same way as continental coastal States. In the case of a Non Self-Governing Territory, the rights over the economic zone should be exercised exclusively for the benefit of the people of the territory and not for the benefit of the administering Powers. On that point he agreed with the proposal contained in document A/CONF.62/C.2/L.30 (see para. 33 (f)), 68/ whose sponsors he complimented for their constructive efforts. However, it would be unjust, and the common heritage of mankind would be further diminished, if every island, irrespective of its characteristics, was automatically entitled to claim a uniform economic zone. Such an approach would give inequitable benefits to coastal States with small or uninhabited islands scattered over a wide expanse of the ocean. The economic zone of a barren rock would be larger than the land territory of many States and larger than the economic zones of many coastal

States. If the common heritage of mankind was to be preserved, special provisions must be drafted to deal with the problem. Clearly, some criteria must be devised to differentiate between islands that deserved an economic zone and those that did not. A scheme of graduated breadths of the economic zone for different types of islands might also be considered. 103/

(x) a. The representative of Venezuela pointed out that article 1 of the 1958 Convention on the Continental Shelf and article 10 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, both of which conventions had been ratified by Venezuela, did not make the maritime jurisdiction of islands depend on their area, the length of their coasts or any other criterion extraneous to the existing definition. He was pleased to note that the ideas underlying those provisions were shared by many delegations, as shown in documents A/CONF.62/C.2/L.30 and 50 and by the statement of the representative of Trinidad and Tobago at the previous meeting.

b. His delegation supported document A/CONF.62/C.2/L.58 (see para. 33 (i)), 78/ but felt that the proposal in it should be supplemented by recognition of the right of the inhabitants of the territories to which it referred to exploit resources "in accordance with their needs and requirements", as stated in document A/CONF.62/C.2/L.30. That solution was a just one in that it allowed for the development needs of the inhabitants of dependent territories. 104/

(xi) a. The representative of France said that his delegation believed there was no legal justification for any distinction between continental land masses and islands with regard to the establishment of a zone where economic rights would be exercised, unless it was possible to arrive at a formula which took into account the divergent interests of the various States involved. The various proposals concerning islands submitted to the Sea-Bed Committee and to the Conference demonstrated the practical impossibility of arriving at such a formula, since almost all of them aimed essentially at limited and unrelated objectives. As the representative of Trinidad and Tobago had demonstrated at the preceding meeting, those proposals, in attempting to satisfy particular interests - however legitimate those interests might be - entailed ingenious criteria and resulted in complex formulae which led other delegations to submit further proposals designed to solve the artificial difficulties that the original proposals created.

b. Certain proposals could not be retained in the form in which they had been submitted. Document A/CONF.62/C.2/L.30, for example, contained some interesting provisions, but its part B was difficult to accept in its existing form as it appeared to deny territories which had not attained independence or autonomy "following an act of self-determination under the auspices of the United Nations" economic rights over maritime resources. Did that mean that territories attaining independence or autonomy outside United Nations auspices would be deprived of their natural rights over the resources of adjacent maritime areas? His delegation believed that it was impossible to make distinctions among islands, since that would amount to denying to certain island territories generally recognized economic rights. It was unnecessary to include particular provisions on that subject in the convention because of the recognized principle of the sovereignty of States. However, if it was deemed necessary to lay down express rules, it would be sufficient to have a clause applying the fundamental rules of the sovereignty of States over all their territories, including islands, and recognizing the consequent rights.

c. The only real problem created by the existence of islands was that of delimiting areas under national jurisdiction. On that question also the various proposals that had been submitted seemed designed to cover particular or local situations. It should be possible to find a general rule allowing respect for the requirements of equity while leaving the door open for the consideration of the facts of each situation. In that regard the proposal in document A/CONF.62/C.2/L.28 (see para. 33 (j) (ii)) reflected a viewpoint which deserved attention. The presence of islands or islets was, in fact, a special circumstance which should be taken into account when dealing with delimitation problems. Such problems, in any case, could be solved only through direct agreement between the parties concerned. 105/

(xii) a. The representative of Jamaica stated that his delegation endorsed the statement of the representative of Trinidad and Tobago, particularly as it related to the rights of island territories such as those which constituted the associated States of the Caribbean. In view of the inequities of the past, provisions such as those in articles 3 and 4 of his delegation's draft articles (document A/CONF.62/C.2/L.35) should be included in the convention. Such provisions should relate not only to islands but to all territories under foreign domination, and should relate to all rights conferred by the convention, not just those relating to the economic zone. Part B of document A/CONF.62/C.2/L.30, which contained a useful formulation, could be amended to cover the latter point.

b. In principle, his delegation supported the view that every island generated and was entitled to its own territorial sea, economic zone and continental shelf. It could not endorse the view that an island's maritime space should be determined according to criteria different from those used for continental land masses. That approach would be legitimate if it were possible to isolate criteria which applied only to islands, but criteria such as size and population were as applicable to continental land masses as they were to islands, and it was difficult to understand why they should be used only to determine the maritime space of islands. 106/

(xiii) The delegation of Cyprus said that his delegation's fundamental position was that no distinction whatsoever should be made between islands, irrespective of their size and population, and continental land masses, and that the principles for determining the territorial sea, the continental shelf and the economic zone of islands should be exactly the same as those that were applied in determining the corresponding national jurisdictions of continental land masses. His delegation's position was firmly based on existing law and practice; he wished to refer in that regard to article 10 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, and to article 1 (b) of the 1958 Geneva Convention on the Continental Shelf. He was accordingly gratified to note that that position was shared by a large number of States, and not only by island States. His delegation particularly wished to associate itself with the views expressed by the representative of Trinidad and Tobago and by the sponsors of document A/CONF.62/C.2/L.30. 107/

(xiv) The representative of Guatemala stressed his delegation's deep interest in all questions relating to the liberation of peoples under colonial domination. In view of that interest, it had been among the sponsors of document A/CONF.62/C.2/L.58 (see para. 33 (i)). 78/ In order to leave no doubt of his delegation's position in the event that that proposal was not adopted, he wished the following statement to be placed on record: Guatemala would not accept the application of any provision of the convention or conventions that the Conference might adopt, nor would it recognize any rights deriving therefrom, either in or for territories occupied by foreign Powers, in usurpation of the legitimate sovereign rights of other States over those territories. 108/

(xv) a. The representative of Tunisia said that the handful of countries which had done their utmost to prevent the inclusion of item 19 in the agenda and to delay its discussion were those whose interests were protected by the provisions relating to the régime of islands in the 1958 Geneva Conventions. Those provisions offered only a weak definition of islands and granted them the same rights as it granted continental land masses. Such a situation favoured mainly those countries which had been able to extend their power over a large number of islands, while it was detrimental to the developing countries, which had not participated in the elaboration of the 1958 Geneva Conventions and which for the most part did not possess any islands. It was also unfavourable to all land-locked and other geographically disadvantaged States, which, having expected an equitable distribution of the resources of the international zone, were justly concerned at seeing that concept rendered meaningless by the exaggerated claims of countries possessing islands, particularly when the concept of the 200-mile economic zone and that of archipelagic States promised to become a reality.

b. The Declaration of the Organization of African Unity 59/ was an attempt to resolve that conflict of interests and establish objective and equitable rules, and his delegation had demonstrated its full support for part B of that Declaration by joining in sponsoring documents A/AC.138/SC.II/L.40 33/ and L.43, 34/ as well as document A/CONF.62/C.2/L.28, on delimitation. A solution could be found only if the relevant clauses of the 1958 Geneva Conventions were tightened up and made more precise. 109/

(xvi) a. The representative of the United Kingdom indicated that there was an immense diversity of island situations, ranging from large and populous islands forming part of even larger continental States to small islands with self-sufficient populations. The world community had already drawn up a body of rules for the maritime spaces of islands, including the rule that islands were entitled to a territorial sea and a continental shelf and the rule on drawing straight baselines round fringes of islands along the coast. There were, however, no rules classifying islands into different types.

b. Attempts had nevertheless been made at the Conference to divide islands into different categories by reference to various criteria, including size, population, position and political status. However, his delegation did not believe that that approach could result in any generally applicable rules that would be equitable in all cases. Indeed, any such formulation was in grave danger of discounting many islands of both absolute and relative importance.

c. One criterion suggested was that of population. In various parts of the world, even in very recent times, several islands which had been inhabited and even self-sufficient had become uninhabited as a result of temporary or long-term changes in climate or economics. Other small islands, formerly uninhabited, had been populated or repopulated. Particularly where the economy of States, or regions of States, with such islands was precarious, it would be grossly unfair to deprive them of, say, an economic zone which might prove a more permanent and certain means of achieving satisfactory development in the face of otherwise overwhelming geographical disadvantages.

d. A second criterion suggested was that of size; but there were large islands which were largely or completely uninhabited and small ones with dense populations which depended heavily upon the sea. A third criterion put forward was the distance of an island from the mainland. In the case of island States and archipelagos, however, it was not possible to say in every case which island constituted the mainland.

e. A fourth criterion was the position of an island in relation to the coast of a foreign State. Reference had been made to an island situated within the territorial sea or on the continental shelf of a neighbouring State. However, in his delegation's view that begged the whole question. The island was entitled to a territorial sea of its own. The continental sea belonged to the island as much as to the neighbouring State. The real question was that of delimiting the territorial sea and the continental shelf between the two, and the same applied to the economic zone.

f. With respect to islands which had not yet attained independence, his delegation largely shared the view of the delegation of Trinidad and Tobago. So far as the dependent territories for which the United Kingdom Government was responsible were concerned, in most cases the principal reason for their continuing dependence was uncertainty about their economic viability. To deprive such territories of any right to an economic zone could only increase that uncertainty and make the attainment of independence more difficult. His delegation considered that the proposals in that sense would have the opposite effect to that which their sponsors presumably had in mind, and it could not support them.

The kind of detailed rules and principles proposed would inevitably bring about the very inequity which they purported to avoid. The existing law and State practice with regard to islands and their maritime spaces, reflected in proposals such as those in part A of document A/CONF.62/C.2/L.30, was perfectly adequate and should remain undisturbed. With respect to the question of delimitation of boundaries, the provisions of article 12 of the Convention on the Territorial Sea and the Contiguous Zone and article 6 of the Convention on the Continental Shelf, which laid down the three-part rule of agreement, special circumstances and median line were adequate and sufficiently flexible. Those rules already allowed for all the different circumstances existing; there was a risk in trying to do too much. 110/

(xvii) a. The representative of Algeria stated that his delegation had already given the essence of its position with regard to islands in its statement at the 37th meeting on archipelagic States. He therefore merely wished to endorse the arguments put forward by the representative of Tunisia when introducing the draft articles on the régime of islands (A/CONF.62/C.2/L.62) (see para. 33 (j)), 82/ of which his delegation was a sponsor. He had noted with satisfaction the growing trend in favour of including in the future convention provisions which took account of the special circumstances of islands. With regard to islands lying in an enclosed or semi-enclosed sea which were neither islands nor archipelagic States, while his delegation had no intention of questioning the sovereignty of States over the different parts of their territory, including islands, it could not accept the attempt by some delegations to use that idea of sovereignty as a legal justification for the recognition of a right to marine space over which the State already had rights as a continental coastal State, thus claiming double rights to those waters, both for itself and for the islands which were in fact part of its territory. That argument would also lead to an unequal sharing of resources between coastal States in narrow seas. It was therefore unacceptable to the Conference and to the international community as a whole. Any such delimitation must be done by bilateral or regional agreement according to principles of equity, taking account of special circumstances, in the interests of all the States concerned. That was a principal advantage of the draft articles in question, which he hoped would be carefully considered by the Committee and receive the support of many delegations.

b. Those considerations applied to narrow seas such as enclosed or semi-enclosed seas. More appropriate solutions based on the draft articles could be worked out for other circumstances, provided that such solutions were reasonable and took account of the overriding concept of the common heritage of mankind. The future convention should ensure the preservation of the inalienable rights of peoples still under colonial domination in all fields, as proposed in draft article 5 of the document, and in accordance with the provisions of the Declaration of the Organization of African Unity on the issues of the law of the sea." 111/

(xviii) a. The representative of Mexico said that the proposal in document A/CONF.62/C.2/L.58 (see para. 33 (i)), 78/ of which his country was a sponsor, was not intended to prejudice in any way the interests of peoples that were subject to colonial domination but to stress that colonial status could not have a permanent legal basis but must be purely temporary. The principle of non-recognition of colonial domination should be as generally recognized as that of the non-recognition of the right to territorial acquisitions effected by force. The draft article expressed that principle and clearly stated that the occupying metropolitan Power had no right to the maritime spaces around those islands or to the resources thereof.

b. There was an immense diversity of island situations, as the United Kingdom representative had said, and it would be difficult, if not impossible, to draft specific regulations to cover them all. Therefore, the basic norm must reflect the provision in document A/CONF.62/C.2/L.30 that the marine space of an island must be measured in accordance with the same provisions as were applicable to other land territory. However, exceptions based on principles of equity could be accepted. 112/

(xix) The representative of Madagascar indicated that, as the representative of an island State, he was fully aware of the difficulty of distinguishing between an island State, an island and an islet. The draft articles in document A/CONF.62/C.2/L.62 were therefore aimed at giving clear definitions. There were three issues related to islands: sovereignty, maritime rights and delimitation. With regard to the first two, there was no problem in the case of island States, but the rights of the inhabitants of islands under foreign domination or control must be clearly stated. Although the question of the remaining continental States under colonial domination was the most difficult and serious issue with which the Committee on decolonization had to deal, those States were

now very few in number and most of that Committee's work was concerned with islands. His country supported the establishment in the future convention of the rights to the territorial sea and the economic zone not only of those islands which were under consideration by the Committee on decolonization but also of any other islands, however small, which were not yet economically and politically independent. He further stated that delimitation was dealt with in draft article 2, which was very clear. 113/

(xx) a. The representative of Italy said that, in the régime of islands, islands could not be deprived of their own territorial sea, which was a constituent part of the territory of the State. The 1958 Geneva Convention on the Continental Shelf had also established the coastal State's rights to the sea-bed and subsoil of submarine areas adjacent to the coasts of islands in the same way as of those adjacent to the coasts of its continental territory. Obviously, if States already exercised rights to the continental shelf of islands, those rights should be respected. A certain flexibility was called for in the provisions for the new concept of the economic zone and the duties and rights of States in that zone; that was legitimate since the Conference was engaged in developing progressive international law. 114/

b. He further added that the 1958 Geneva Conventions had provided a simple and radical solution to the problem of the régime of waters, soil and subsoil of the sea adjacent to islands. Article 10 of the Convention on the Territorial Sea and the Contiguous Zone and article 1 of the Convention on the Continental Shelf laid down the principle that islands should be assimilated to other territories of the State. Furthermore, the first of those proposals included a definition broad enough to include all natural land extensions which remained uncovered at high tide. In the Sea-Bed Committee, some delegations had been in favour of a revision of the system adopted by the Geneva Conventions. Proposals had been advanced with a view to classifying islands into various categories because of their different situations. His delegation had indicated the reasons why it believed that islands should not be deprived of their territorial sea, their continental shelf or their future economic zone. In any event, it could not accept any suggestion aimed at depriving islands of their ocean space or even calling into question their legal status by imposing abstract formulae incompatible with the principles of international law, which required that all elements that constituted the territory of a State should have the same rights and which ensured respect for a State's sovereignty and territorial integrity. 115/

(xxi) a. The representative of Spain declared that in his delegation's view the following criteria should be taken into account in regulating the complex and difficult question of islands. First, a generally acceptable definition of islands had to be established. That could be done by distinguishing islands from other geographical conformations which must also be defined with precision. Such a step would have the advantage of not including an overly general but rather a specific idea of islands in the future codification. In that connection, he said that some of the proposals put forward contained elements that would be very useful in establishing the concept and legal régime to be applied to islands.

b. Secondly, if the future convention, following the 1958 codification, were to retain the assumption of "special circumstances" for delimitation, it would be necessary to specify the territories to which such special circumstances should apply. The mere presence of islands in a maritime space did not constitute per se a special circumstance; if it were so considered, the danger already existing in the imprecise idea of special circumstances would be intensified, and it would become extremely difficult for neighbouring States to negotiate on delimitation of maritime spaces close to islands.

c. Thirdly, an appropriate method must be found to solve the problem of the régime of islands. In his delegation's view the point of departure should be equal treatment for all parts of a State, whether continental, insular or archipelagic. Moreover, the régime of islands must be based on the following fundamental principles: first, the territorial unity and integrity of the State, including the territorial waters and the air space above them; secondly, the indivisibility of the sovereignty of the State over its territory, continental or maritime; and lastly the sovereign equality of all States, great or small, insular or archipelagic, continental or "mixed". All the above-mentioned general criteria would, in his delegation's view, provide a satisfactory solution for the delimitation of maritime spaces under the jurisdiction of neighbouring or opposite States and allow for adaptation in exceptional cases. 116/

35. The above presentation of statements is not exhaustive and reflects only the declarations made under items 6.6.5 and 19. Other delegations briefly expressed their views on the régime of islands while addressing other related issues such as the territorial sea, 117/ the continental shelf 118/ and archipelagos. 119/ In most cases the régime of islands was only incidentally touched upon in those declarations.

36. At its 9th informal meeting, on 15 August 1974, the Committee approved a proposal submitted by the Chairman on the organization of the second stage of its work. The proposal, as adopted, reads as follows:

"'1. Priority will be given to the completion of the first stage of the Committee's work, namely the consideration of the informal working papers which still have to be discussed and their possible revision.

"'2. Simultaneously, whenever time was available, the Committee will undertake a second reading of the items allocated to it, which will be regrouped as follows:

"'GROUP I: item 2 (Territorial sea); item 4 (Straits used for international navigation); item 16 (Archipelagos); and item 3 (Contiguous zone). Item 17 (Enclosed and semi-enclosed seas), item 18 (Artificial islands and installations) and item 19 (Régime of islands) can also be discussed in so far as they relate to the other items included in this group. *

"'GROUP II: item 5 (Continental shelf); item 6 (Exclusive economic zone); item 7 (Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea); item 10 (Rights and interests of shelf-locked States and States with narrow shelves or short coastlines); and item 11 (Rights and interests of States with broad shelves). Item 9 (Land-locked countries), item 17 (Enclosed and semi-enclosed seas), item 18 (Artificial islands and installations) and item 19 (Régime of islands) can also be discussed in so far as they relate to the other items included in this group. *

"'GROUP III: item 8 (High seas) and item 24 (Transmission from the high seas). Item 18 (Artificial islands and installations) and item 19 (Régime of islands) can also be discussed in so far as they relate to the other items included in this group. *

"'3. The aim of this second reading is to reduce, as far as possible, the number of alternative formulations in the working papers. Consequently, discussions should be focused on differences of substance, not on questions of drafting, except where new wording can help to combine alternative formulations.

"'4. There will be an opportunity for delegations to introduce proposals in formal meetings of the Committee. It is to be hoped that these new proposals will be primarily designed to consolidate texts and thus reduce the number of variants. However, most of the work in the second stage will be carried out at informal meetings." 120/

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* Emphasis added.

37. Subsequently, a statement of activities of the Conference during its first and second sessions prepared by the Rapporteur-General indicated, inter alia, that:

> "In furtherance of the decision of the Committee on the organization of the first stage of its work, the officers prepared a series of 13 informal working papers in order to reflect in generally acceptable formulations the main trends which had emerged, with relation to the items allocated to the Committee, from the proposals submitted to the Sea-Bed Committee or to the Conference itself.
>
> "In a statement made at the 46th meeting of the Committee on 28 August 1974 (A/CONF.62/C.2/L.86), the Chairman recalled the procedure followed in the preparation and consideration of the informal working papers. As noted in that statement, the Committee considered these informal working papers at its informal meetings. Taking into account the observations and comments made by members of the Committee on both the substance and form of the informal working papers, the officers prepared two revisions of each paper.
>
> "In accordance with its decision on the organization of the second stage of its work, the Committee completed a second reading, provision by provision, of the informal working paper on item 2 - Territorial Sea.
>
> "At its 46th meeting, the Committee decided to consolidate the 13 informal working papers into a single working document, which would form a basis for its future work." 121/

38. The single working document referred to above was issued separetely as document A/CONF.62/C.2/WP.1. 122/ Within that document attention is drawn, in particular, to the following draft provisions:

> "PART XIII. REGIME OF ISLANDS (item 19)
>
> "Provision 239
>
> "Formula A
>
> "An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
>
> "Formula B
>
> "1. An island is a vast naturally formed area of land, surrounded by water, which is above water at high tide.

"2. An islet is a smaller naturally formed area of land, surrounded by water, which is above water at high tide.

"3. A rock is a naturally formed rocky elevation of ground, surrounded by water, which is above water at high tide.

"4. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide.

"Formula C

"1. An islet is a naturally formed elevation of land (or simply an eminence of the sea-bed) less than one square kilometre in area, surrounded by water, which is above water at high tide.

"2. An island similar to an islet is a naturally formed elevation of land (or simply an eminence of the sea-bed) surrounded by water, which is above water at high tide, which is more than one square kilometre but less than ... square kilometres in area, which is not or cannot be inhabited (permanently) or which does not or cannot have its own economic life.

"1. Islands under colonial dependence or foreign domination or control

"Provision 240

"Formula A

"In respect of a territory whose people have attained neither full independence nor some other self-governing status following an act of self-determination under the auspices of the United Nations, the rights to the resources of the economic zone created in respect of that territory and to the resources of its continental shelf are vested in the inhabitants of that territory to be exercised by them for their benefit and in accordance with their needs and requirements. Such rights may not be assumed, exercised or profited from or in any way infringed by a metropolitan or foreign Power administering or occupying that territory.

"Formula B

"1. No economic zone shall be established by any State which has dominion over or controls a foreign island in waters contiguous to that island.

"2. The inhabitants of such islands shall be entitled to create their economic zone at any time prior to or after attaining independence or self-rule. The right to the resources of such economic zone and to the resources of its continental shelf are vested in the inhabitants of that island to be exercised by them for their benefit and in accordance with their needs or requirements.

"3. In case the inhabitants of such islands do not create an economic zone, the Authority shall be entitled to explore and exploit such areas, bearing in mind the interests of the inhabitants.

"Formula C

"The rights recognized or established in the present Convention shall not be invoked by the colonial or occupying Power in respect of islands and other territories under colonial domination or foreign occupation as long as that situation persists.

"Formula D

"Concerning islands under colonial domination, racist régime or foreign occupation, the rights to the maritime spaces and to the resources thereof belong to the inhabitants of those islands and must profit only their own development.

"No colonial or foreign or racist Power which administers or occupies those islands shall exercise those rights, profit from them or in any way infringe upon them.

"2. Other related matters

"Provision 241

"Formula A

"1. Maritime spaces of islands shall be determined according to equitable principles, taking into account all relevant factors and circumstances including, inter alia:

"(a) The size of islands;

"(b) The population or the absence thereof;

"(c) Their contiguity to the principal territory;

"(d) Whether or not they are situated on the continental shelf of another territory;

"(e) Their geological and geomorphological structure and configuration.

"2. Island States and the régime of archipelagic States as set out under the present Convention shall not be affected by this article.

"Formula B

"1. Subject to paragraph 4 of this article, the territorial sea of an island is measured in accordance with the provisions of this Convention applicable to other land territory.

"2. The economic zone of an island and its continental shelf are determined in accordance with the provisions of this Convention applicable to other land territory.

"3. The foregoing provisions have application to all islands, including those comprised in an island State.

"4. In the case of atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea shall be the seaward edge of the reef, as shown on official charts.

"Formula C

"1. The sovereignty and jurisdiction of a State extends to the maritime zones of its islands determined and delimited in accordance with the provisions of this Convention applicable to its land territory.

"2. The sovereignty over the island extends to its territorial sea, to the air space over the island and its territorial sea, to its sea-bed and the subsoil thereof and to the continental shelf for the purpose of exploring it and exploiting its natural resources.

"3. The island has a contiguous zone and an economic zone on the same basis as the continental territory, in accordance with the provisions of this Convention.

"Formula D

"1. An island situated in the economic zone or on the continental shelf of other States shall have no economic zone or continental shelf of its own if it does not contain at least one tenth of the land area and population of the State to which it belongs.

"2. Islands without economic life and situated outside the territorial sea of a State shall have no marine space of their own.

"3. Rocks and low-tide elevations shall have no marine space of their own.

"Formula E

"1. The marine spaces of islets or islands similar to islets situated in the territorial sea, on the continental shelf or in the economic zone of another State shall be determined by agreement between the States concerned or by other means of pacific settlement used in international practice.

"2. The marine spaces of such elevations of land situated in the international zone of the sea-bed shall be established by agreement with the international authority for that zone.

"Provision 242

"Formula A

"1. In principle, a State may not invoke the existence, in one of its maritime zones, of islets or islands similar to islets, as defined in article ... (provision 239, formula C), for the purpose of extending the marine spaces which belong to its coasts.

"2. Where such elevations of land are situated along the coast of the same State, in immediate proximity thereto, they shall be taken into consideration, in accordance with the provisions of this Convention, for the purpose of establishing the baseline from which the breadth of the territorial sea is measured.

"3. Where an islet or island similar to an islet is situated in the territorial sea of the same State but very close to its outer limit, the State in question may reasonably extend its territorial waters seaward or establish an additional maritime zone for the protection of lighthouses or other installations on such islet or island. The additional zones thus established shall in no way affect the marine spaces belonging to the coasts of the neighbouring State or States.

"4. Islets or islands similar to islets which are situated beyond the territorial sea, on the continental shelf or in the economic zone of the same State, may have around them or around some of their sectors security areas or even territorial waters in so far as this is without prejudice to the marine spaces which belong to the coasts of the neighbouring State or States.

"5. Where such eminences of the sea-bed are situated very close to the outer limit of the continental shelf or of the economic zone, the extension of their security zones or their territorial waters shall be established by agreement with the neighbouring State or States or, where appropriate, with the authority for the international zone, having regard to all relevant geographic, geological or other factors.

"Formula B

"1. An island, islet, rock or a low-tide elevation are considered as adjacent when they are situated in the proximity of the coasts of the State to which they belong.

"2. An island, islet, rock or a low-tide elevation are considered as non-adjacent when they are not situated in the proximity of the coasts of that State to which they belong.

"3. The baselines applicable to adjacent islands, islets, rocks and low-tide elevations, in accordance with article ... (paras. 1 and 2 and provision 239, formula B), are considered as the baselines applicable to the State to which they belong and consequently are used in the measurement of the marine spaces of that State.

"4. The marine spaces of islands considered non-adjacent, in accordance with paragraphs ... (para. 2 and provision 239, formula B, para. 1) shall be delimited on the basis of relevant factors taking into account equitable criteria.

"5. These equitable criteria should notably relate to:

"(a) The size of these naturally formed areas of land;

"(b) Their geographical configuration and their geological and geomorphological structure;

"(c) The needs and interests of the population living thereon;

"(d) The living conditions which prevent a permanent settlement of population;

"(e) Whether these islands are situated within, or in the proximity of, the marine space of another State;

"(f) Whether, due to their situation far from the coast, they may influence the equity of the delimitation.

"6. A State cannot claim jurisdiction over the marine space by virtue of the sovereignty or control which it exercises over a non-adjacent islet, rock or low-tide elevation as defined in paragraphs ... (para. 2 and provision 239, formula B, paras. 2 to 4).

"7. In accordance with paragraph 6, safety zones of reasonable breadth may nevertheless be established around such non-adjacent islets, rocks or low-tide elevations.

"8. The provisions of articles ... (paras. 1 to 7 and provision 239, formula B) shall not apply either to island or to archipelagic States.

"9. A coastal State cannot claim rights based on the concept of archipelago or archipelagic waters by reason of its exercise of sovereignty or control over a group of islands situated off its coasts.

"Formula C

"(See part I, provision 4, formula A; provision 5, formula A; provision 7, formula A and provision 8).

"Provision 243

"Formula A

"1. The delimitation of any marine or ocean space shall, in principle, be effected between the coasts proper of the neighbouring States, using as a basis the relevant points on the coasts or on the applicable baselines, so that the areas situated off the sea frontage of each State are attributed thereto.

"2. Islands which are situated in the maritime zones to be delimited shall be taken into consideration in the light of their size, their population or the absence thereof, their situation and their geographical configuration, as well as other relevant factors.

"3. Low-tide elevations, islets and islands that are similar to islets (of small size, uninhabited and without economic life) which are situated outside the territorial waters off the coasts and which constitute eminences on the continental shelf - whether lighthouses or other installations have been built on them or not - and man-made islands - regardless of their dimensions and characteristics - shall not be taken into consideration in the delimitation of marine or ocean space between neighbouring States.

"4. The naturally formed areas of land referred to in paragraph 3 may have around them or around some of their sectors maritime safety areas or even territorial waters, provided they do not affect marine spaces belonging to the coasts of neighbouring States.

"5. The provisions of the present article shall not be applicable to islands and to other naturally formed areas of land which constitute part of an island State or of an archipelagic State.

"Formula B

"1. In areas of semi-enclosed seas, having special geographic characteristics, the maritime spaces of islands shall be determined jointly by the States of that area.

"2. The provisions of this chapter shall be applied without prejudice to the articles of this Convention relating to delimitation of marine spaces between countries with adjacent and/or opposite coasts.

"Formula C

"1. In accordance with the provisions of articles ... (provision 242, formula B, paras. 2, 4 and 5), the delimitation of the marine spaces between adjacent and/or opposite States must be done, in the case of presence of islands, non-adjacent islets, rocks and low-tide elevations, by agreement between them according to principles of equity, the median or equidistance line not being the only method of delimitation.

"2. For this purpose, special account should be taken of geological and geomorphological criteria, as well as of all other special circumstances.

"Formula D

"1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line, every point of which is equidistant from the nearest points on the baselines, continental or insular, from which the breadth of the territorial seas of each of the two States is measured.

"2. Where the coasts of two or more States are adjacent or opposite to each other, the delimitation of the continental shelf boundaries shall be determined by agreement amongst themselves.

"3. Failing such agreement, no State is entitled to extend its sovereignty over the continental shelf beyond the median line every point of which is equidistant from the nearest points of the baselines, continental or insular, from which the breadth of the continental shelf of each of the two States is measured.

"4. Where the coasts of two or more States are adjacent or opposite to each other and the distance between them is less than double the uniform breadth provided in this Convention, the delimitation of their economic zones and of their sea-bed areas shall be determined by agreement among themselves.

"5. Failing such agreement, no State is entitled to extend its rights over an economic zone and sea-bed area beyond the limits of the median line every point of which is equidistant from the nearest points of the baselines, continental or insular, from which the breadth of the above areas of each of the two States is measured.

"Formula E

"Where the coasts of two States are opposite or adjacent to each other, either of the two States is entitled, failing agreement between them to the contrary, to extend its maritime spaces beyond the median line, every point of which is equidistant from the nearest points on the baselines, continental or insular, from which the breadth of the maritime spaces of each of the two States is measured.

"Formula F

"Where the coasts of two or more States are adjacent and/or opposite to each other, the delimitation of the respective maritime spaces shall be determined by agreement among them in accordance with equitable principles, taking into account all the relevant factors including, inter alia, the geomorphological and geological structure of the sea-bed area involved, and special circumstances such as the general configuration of the respective coasts, and the existence of islands, islets or rocks within the area.

"Formula G

"1. The delimitation of the continental shelf or of the economic zone between adjacent and/or opposite States shall be effected by agreement between them in accordance with an equitable dividing line, the median or equidistance line not being the only method of delimitation.

"2. For this purpose, account shall be taken, inter alia, of the special nature of certain circumstances, including the existence of islands or islets situated in the area to be delimited or of such kind that they might affect the delimitation to be carried out.

"Provision 244

"..."

39. As to the status of those draft provisions, in the introduction to the document it was indicated, inter alia, that:

"The sole purpose of this working paper is to reflect in generally acceptable formulations the main trends which have emerged from the proposals submitted either to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction or to the Third United Nations Conference on the Law of the Sea.

"The inclusion of these formulations does not imply any opinion on the degree of support they have commanded either in the preparatory stage or in the proceedings of the Caracas session of the Conference. Moreover, it does not imply that all the proposals from which these formulations have been taken have been discussed in the Second Committee. The inclusion of a provision in this paper, whether or not only one formula appears, does not necessarily imply that there are no other opinions concerning these questions or that all or most delegations agree on the necessity for such a provision.

"All the proposals submitted to the Sea-Bed Committee and to the Conference remain before the Second Committee and may be considered by it at any time. Thus, the preparation of this document and its acceptance by the Committee as a working paper in no way signifies that these proposals have been withdrawn.

"Since the purpose of this paper is to focus the discussion of each of the items allocated to the Second Committee on the fundamental issues, leaving until later the consideration of supplementary rules and drafting points, the paper does not include all the proposals contained in the reports of the Sea-Bed Committee or submitted to the Conference." 123/

40. Although many proposals were put forward during the second session, the Chairman of the Second Committee stated at the 46th meeting, "no decision on substantive issues has been taken ..., nor has a single article of the future convention been adopted". 124/ It is noteworthy that item 19 entitled "Régime of Islands" as envisaged in document A/CONF.62/C.2/WP.1 contained a wide

variety of issues - the determination of the "ocean spaces" of islands per se (i.e., irrespective of other related problems such as their effect on the question of delimitation), the problem of islands under colonial dependence or foreign domination or control and the problem of the delimitation of the respective maritime spaces where the coasts of two or more States are adjacent and/or opposite. This approach was to be narrowed at the third session as each of these issues was considered in the light of a number of distinct draft provisions, placed under different headings.

II. THIRD AND SUBSEQUENT SESSIONS

A. Third session

(Geneva, 17 March-9 May 1975)

41. At its 47th meeting in Geneva, on 18 March 1975, the Second Committee adopted a programme of work for the first part of the third session. 125/ It was decided in particular that:

(a) A review of the documents produced at Caracas should be undertaken on the basis of the groups of items decided on there, with a view to elaborating consolidated texts. The basic text would be the working paper on main trends in document A/CONF.62/C.2/WP.1 (see para. 38 above);

(b) Informal consultations on the views expressed during the review of the above document should be held. An attempt would be made to focus the process of consultation on the essential items. The Chairman and the officers, with the assistance of the Secretariat, would be authorized to carry on consultations and would report on them to the Committee periodically;

(c) Working groups already in existence or which delegations might decide to set up should be encouraged;

(d) Delegations which had maintained differing views, set out in alternative formulae, should meet and attempt to reach compromises, and report in due course on the result of their consultations;

(e) Formal meetings should be held for the official submission of new proposals by States, or groups of States, or to hear progress reports on consultations.

42. Subsequently, at its 33rd informal meeting, on 4 April 1975, the Committee decided to establish a number of informal consultative groups in which all members of the Committee could participate and which would deal with specific issues such as islands. The formal and informal consultations held pursuant to that outline of procedure allowed the Committee to narrow the number of alternatives submitted by delegations. At its 55th plenary meeting, on 18 April 1975, the Conference decided to request the Chairmen of its three Main Committees each to prepare a single negotiating text covering the subjects entrusted to his Committee, taking into account all formal and informal discussions and proposals. 126/ With respect to the Second Committee, the results of its work were reflected in part II of the Informal single negotiating text, document A/CONF.62/WP.8 of 7 May 1975. 127/ In an introductory note to that document, the Chairman of the Second Committee indicated that, in particular,

> "In the preparation of the present text, covering the subjects allocated to the Second Committee, account was taken of the documents before the Conference and the official and unofficial consultations held during the current session.
>
> "The particular nature of this text did not allow the retention of all the trends reflected in document A/CONF.62/C.2/WP.1 and in other proposals submitted either to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction or to the Conference. The aim of the Conference in adopting the new method for the future stage of its work would have been defeated had all trends been retained in this text. It was possible to amalgamate some of the alternative formulations but in other cases it was necessary to choose between conflicting proposals. In certain cases, a middle course was adopted.
>
> "The justification for the task entrusted to me is to be found in the particular nature of the single negotiating text as defined by the President and in the need to have a working instrument on the basis of which the process of negotiations can be intensified. I have endeavoured to accomplish this task to the best of my ability and express the hope that it will fulfil the purposes for which it was requested by the Conference."

43. During the third session, no proposals or declarations were made in relation to the régime of islands. The informal single negotiating text based its formula relating to the régime of islands on the work done during the second session of the Conference and during the Sea-Bed Committee. The draft is as follows:

"Part VIII: Régime of Islands

"Article 132

"1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

"2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of the present Convention applicable to other land territory.

"3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

44. As to the status of the informal single negotiating text, the President of the Conference, at the end of the 55th plenary meeting, stressed that:

"[the informal single negotiating text] would be informal in character and would not prejudice the position of any delegation nor would it represent any negotiated text or accepted compromise. It should, therefore, be quite clear that the single negotiating text will serve as a procedural device and only provide a basis for negotiation. It must not in any way be regarded as affecting either the status of proposals already made by delegations or the right of delegations to submit amendments or new proposals." 128/

45. In view of this new stage of the activities of the Conference, the following observations can be made:

(a) This was the first time that the question of régime of islands was considered distinctly from other related issues such as the problem of the effects of such land formations on the delimitation of the respective maritime spaces between States whose coasts are adjacent or opposite. It should be noted that attempts to link the provisions on the régime of islands to the delimitation provisions were not successful since they did not obtain the required consensus.

(b) Despite the original heading given to the question of the régime of islands ("Islands under colonial dependence or foreign domination or control"), it appears that a new trend led the Conference to dissociate these two issues, as evidenced by the fact that the problem of "Territories [in contradistinction to "islands"] under foreign occupation or colonial domination" was now addressed in Part X of the informal single negotiating text;

(c) Given the purpose of the present study, which is to trace the legislative history of Part VIII of the Convention, the developments on these related issues will not be considered herein.

46. The informal single negotiating text was to form the basis of the negotiations in the fourth session, which started on 15 March 1976.

B. Fourth session

(New York, 15 March-7 May 1976)

47. At the first meeting of the fourth session, on 15 March 1976, the President of the Conference indicated that the next phase should be the preparation by the Chairmen of the three Committees of a revised single negotiating text and that this revised text would reflect as far as possible the result of the informal negotiations that have taken place. 129/

48. At the 49th meeting of the Second Committee, on 16 March 1976, the Chairman suggested that the work of the Committee should be organized along the lines indicated by the President of the Conference in his statement at the plenary meeting on the previous day, which could be summarized as follows:

(a) There should be no general debate and the Committee should work informally and expeditiously on the basis of the informal single negotiating text;

(b) No formal amendments or alternative texts should be submitted. Of course, delegations could comment on the articles of the single text and make suggestions, either orally or in writing, concerning possible modifications to the text;

(c) The work of the Committee should be co-ordinated with the work of the other Committees through the General Committee;

(d) Meetings of the Committee should be given priority over meetings of regional groups, special interest groups and so on. Although such group meetings could in many instances facilitate the Committee's work, the Committee should be the main organ of negotiation. Ideally, matters should be dealt with at meetings in which all members of the Committee participated. For the time being, there was no intention of establishing subcommittees or working groups, but if any were established they would be open to all delegations. Particular care should be taken to avoid holding meetings of regional or special interest groups during the normal working hours of the Committee;

(e) The stage of consideration of the single text should be concluded within a reasonable time, after which a revised text reflecting the results in the most appropriate manner would be prepared.

In order to proceed along those lines, he suggested that the following approach should be adopted: (1) informal meetings of the Committee would be held to discuss part II of the informal single negotiating text article by article; (2) Whenever the need arose, the Chairman would hold informal consultations; (3) The current stage of the work should be concluded by about the middle of the session. After that, the Chairman would need some time to prepare a revised single text reflecting the results of the first stage. 130/

49. Upon the conclusion of this process, the result of the work undertaken thereto was incorporated into part II of the Revised single negotiating text, document A/CONF.62/WP.8/Rev.1 of 6 May 1976. 131/ With respect to the régime of islands, attention should be paid to "Chapter VIII. Régime of Islands".

50. (a) The draft reads as follows:

"Chapter VIII. Régime of Islands

"Article 128

"Régime of islands

"1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

"2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of the present Convention applicable to other land territory.

"3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

(b) As compared to the preceding draft (see para. 43 above), this text remains unchanged in substance. However, the following drafting changes were made:

(i) In the title, the word "Part" has been replaced with the word "Chapter";

(ii) The draft has a new numbering: "article 128";

(iii) The sub-title "Régime of islands" is new.

51. With regard to the status of the revised single negotiating text, the President of the Conference indicated that:

"The revised single negotiating text would represent a further stage in the work of the Conference. The Chairmen of the three Committees have accordingly prepared revised single negotiating texts. These texts have been prepared entirely on their own responsibility and will have no other status than that of serving as a basis for continued negotiation without prejudice to the right of any delegation to move any amendments or to introduce any new proposals. The texts must not be regarded as committing any delegation or delegations to any of their provisions. In accordance with the procedure already established, there will be no general discussion of the texts." 132/

C. Fifth session

(New York, 2 August-17 September 1976)

52. During the fifth session, the Second Committee held no formal meetings. However, at the beginning of the session, the President of the Conference in a note reminded the delegations that during the closing stages of the fourth session he had suggested that at the fifth session delegations should initially concentrate their negotiations on the key issues which, when agreed upon, should substantially promote progress towards a generally acceptable treaty. Subsequently, he suggested a list of what he considered to be key issues in the light of the discussions, consultations and negotiations which had taken place thus far and from the introductory observations of the chairmen of the three committees. That list was subject to modification by the committees themselves. 133/ The question of the régime of islands was not included in that list. A reading of the report of the Chairman of the Second Committee on the work of the Committee during that session 134/ also reveals that "régime of islands" did not appear in the list of "priority questions" of that Committee.

D. Sixth session

(New York, 23 May-15 July 1977)

53. At its 78th plenary meeting, on 28 June 1977, the Conference requested the President and the Chairmen of the Main Committees, working under the President's leadership as a team together with the Chairman of the Drafting Committee and the Rapporteur-General, to prepare an informal composite negotiating text covering the entire range of subjects and issues contained in parts I to IV of the revised single negotiating text. That team was to be later known as "the Collegium".

54. In the preparation of the new negotiating text, it was understood that:

(a) While the President would be free to proffer his own suggestions on the proposed provisions of any part of the composite text, in regard to any matter which fell within the exclusive domain of a particular chairman, that chairman's judgement as to the precise formulation to be incorporated in the text should prevail;

(b) So far as issues on which negotiations had not taken place were concerned, there should be no departure from the revised single negotiating text unless it was of a consequential character;

(c) The chairman of each committee was to bear full responsibility for those provisions of the informal composite negotiating text which were the exclusive and special concern of his committee.

55. The outcome of the work of the team appears in the Informal composite negotiating text, document A/CONF.62/WP.10 of 15 July 1977. 135/ In that text, the régime of islands is dealt with in Part VIII. The new draft follows exactly the language of the previous one (see para. 50 above), with the following drafting changes:

(a) In the title, the word "Chapter" has been replaced with the word "Part";

(b) The draft has a new numbering: "article 121".

56. As to the status of the informal composite negotiating text, a memorandum by the President of the Conference on the document indicated that, in particular:

> "The Conference ... agreed that the composite negotiating text would be informal in character and would have the same status as the informal single negotiating text and the revised single negotiating text and would, therefore, serve purely as a procedural devise and only provide a basis for negotiation without affecting the right of any delegation to suggest revisions in the search for a consensus." 136/

E. Seventh session

(Geneva, 28 March-19 May 1978; resumed seventh session, New York, 21 August-15 September 1978)

57. At the beginning of the first part of the seventh session, the Conference adopted at its 90th plenary meeting a set of decisions relating to its organization of work (document A/CONF.62/62). 137/ That document contains a number of recommendations concerning the future work of the Conference. The following recommendations are particularly noteworthy:

> "1. The seventh session should give priority to the identification and resolution of the outstanding core issues. Besides the core issues, the Conference should also discuss and resolve all other issues which remain outstanding.
>
> "2. The general principle to be adopted should be that where an issue has not received sufficient consideration in the main committee to which it has been assigned, that committee should be free first to discuss the matter and decide whether or not to appoint a negotiating group before reporting to the Plenary.
>
> "...

"6. Other issues may also be considered in accordance with recommendation 2 above. These may include, inter alia, the following:

"(i) Régime of islands;

"...

"This list is not exhaustive and does not imply any degree of urgency or priority.

"...

"9. The Plenary should aim at the completion of all substantive discussions for the production of a draft convention at the seventh session. The work programme adopted by the Plenary should provide for the revision of the informal composite negotiating text and the discussion of the revised informal composite negotiating text.

"10. Any modifications or revisions to be made in the informal composite negotiating text should emerge from the negotiations themselves and should not be introduced on the initiative of any single person, whether it be the President or a chairman of a committee, unless presented to the Plenary and found, from the widespread and substantial support prevailing in Plenary, to offer a substantially improved prospect of a consensus.

"11. The revision of the informal composite negotiating text should be the collective responsibility of the President and the chairmen of the main committees, acting together as a team headed by the President. The Chairman of the Drafting Committee and the Rapporteur-General should be associated with the team as the former should be fully aware of the considerations that determined any revision and the latter should, ex officio, be kept informed of the manner in which the Conference has proceeded at all stages.

"..."

58. In pursuance of the above recommendations, a number of negotiating groups were entrusted with the task of holding informal discussions on the core issues identified in document A/CONF.62/62. With regard to the régime of islands, a search of the archives of the Office for Ocean Affairs and the Law of the Sea reveals that the following informal suggestions and amendments were submitted:

(a) Algeria, Bangladesh, Cameroon, Iraq, Libya, Madagascar, Morocco, Nicaragua, Somalia, Turkey: document C.2/Informal Meeting/21 of 28 April 1978

"Article 121

"1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

"2. Except as provided for in paragraphs 3 and 4, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of the present Convention applicable to other land territory.

"3. Islands which because of their geographical location constitute a source of distortion or inequity in the drawing of a boundary line between two or more adjacent or opposite States shall have marine spaces only to the extent compatible with equitable principles and with all geographic and other relevant circumstances.

"4. Rocks and islets which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

(b) Japan: document C.2/Informal Meeting/27 of 3 May 1978

"Delete paragraph 3 of article 121."

59. However, as the Chairman of the Second Committee stated in his report:

"... In the case of some questions that were of interest to a number of delegations, such as the régime of islands ..., to which reference is made in paragraph 6 of document A/CONF.62/62, it was not possible to devote the consideration they deserved to the informal suggestions submitted by several delegations on these matters. There was time only for us to hear the presentation of the informal suggestions on these questions.

"I wish to point out, however, that, during the informal meetings devoted to these points, ... there was at least an opportunity for delegations interested in the questions of the régime of islands ... to make informal suggestions concerning possible changes in [that part] of the composite text." 138/

60. In view of these developments, several delegations expressed their concern at the plenary meeting which took place in May 1978.

(a) The representative of Iraq said that, in view of the importance which certain States attached to article 121, proper attention should be given to it, particularly since the subject it dealt with was mentioned in recommendation 6 contained in document A/CONF.62/62. 139/

(b) The representative of Madagascar declared that, like other delegations, the Madagascar delegation regretted that the Second Committee had not been able to consider the régime of islands, which was, after all, referred to in document A/CONF.62/62, and hoped that those topics would receive due priority in future negotiations. So far as the régime of islands was concerned, he referred to a new article 121 proposed jointly by his and nine other delegations (C.2/Informal Meeting/21) and wished to make an interpretative statement concerning paragraph 4 of that article. That paragraph should be construed as applying to islands which were still under a colonial régime and hence was not applicable to islands that were or should normally be under the sovereignty of the State belonging to the same geographical area with which such islands formed a geological, historical, economic and juridical whole, according to the principle of status quo ante, at the time when the principal State and political community came into being. 140/

(c) The representative of Mauritius said that the representative of Madagascar had made a welcome clarification concerning the proposals he had co-sponsored in relation to the régime of islands. The delegation of Mauritius understood that the provisions of paragraph 4 of document C.2/Informal Meeting/21 did not apply to islets belonging to island States like Mauritius. 141/

(d) The representative of Greece indicated that questions such as those concerning the régime of islands had been exhaustively discussed at all previous sessions and settled in a satisfactory manner. His delegation did not consider, therefore, that there were arguments justifying changes, except for those advanced in favour of the deletion of paragraph 3 of article 121, which would be desirable in order to avoid the adoption of arbitrary criteria. 142/

(e) The representative of Japan pointed out that the amendment proposed by his delegation, namely to delete paragraph 3 of article 121 (C.2/Informal Meeting/27), related to a question which had been under discussion by the Conference since the very beginning. The position of the countries supporting that delegation was well known. They considered that it was not right to make distinctions between islands according to their size or according to whether or not they were habitable. Furthermore, the Convention on the Continental Shelf made no distinction between habitable and uninhabitable islands. Nor did many States which had an exclusive zone of 200 nautical miles make such a distinction. 143/

(f) The representative of Egypt said that, in particular, the régime of islands was of vital importance and must be the subject of further discussion. 144/

(g) The representative of the Libyan Arab Jamahiriya made the point that the Conference itself had recognized that questions such as the régime of islands were of vital importance, and his delegation therefore hoped that time would be set aside for them to be studied as they merited. In informal contacts, it had found a wide measure of support for the amendment to article 121 which it and other delegations had suggested (C.2/Informal Meeting/21). The amendment would eliminate the possibility of abuse and contribute to the progressive development of international law. 145/

(h) The representative of Algeria regretted that there had been no time to discuss the régime of islands and that his delegation hoped that discussions on that point would be held at a later stage. 146/

(i) The representative of France declared that, on the question of islands, the French delegation fully supported the Japanese proposal to delete paragraph 3 of article 121 (C.2/Informal Meeting/27). 147/

(j) The representative of Malta said that his delegation recognized the difficulty of defining maritime spaces because of the presence of islands, but it could not support the suggestions which had been made on the subject of islands unless a clear distinction was drawn between island States and other islands. 148/

(k) The representative of Cyprus stated that the delegation of Cyprus had consistently expressed the view that no distinction whatsoever should be made between insular and continental territories with regard to entitlement to zones of maritime jurisdiction. 149/

(l) The representative of Ireland indicated that her delegation supported the delegations of Iraq, Turkey and Cyprus which had referred to the need to give time at the forthcoming session for a discussion on article 121. She could not agree with delegations which had claimed that the negotiations on the provisions of that article had been exhaustive. The article had implications for other provisions in the convention, including those dealing with delimitation, which also remained to be satisfactorily resolved by further negotiation. Her delegation was opposed to the proposal by Japan for the deletion of paragraph 3 of article 121. It would explain its position on that article at the appropriate time. 150/

61. At its 106th plenary meeting, on 19 May 1978, the Conference decided to resume the seventh session in New York, from 21 August to 15 September, and to maintain for the second part of the session the organization and methods of work decided upon for the first part. 151/

62. Summing up the work undertaken during the resumed seventh session, the Chairman of the Second Committee indicated in his report to the plenary that:

> "During this second part of the seventh session, the Second Committee held five informal meetings in order to give an opportunity to all the participating delegations to present their comments on the articles in parts II to X of the informal composite negotiating text and to explain their informal suggestions so as to overcome any difficulties that the latter might present. In the first part of the current session, it was not possible to complete this exercise owing to lack of time, and the discussion on the suggestions made had to be curtailed at article 73 of the informal composite negotiating text.
>
> "Among the questions discussed at informal meetings of the Second Committee during the resumed seventh session were suggestions relating to two issues expressly mentioned in paragraph 6 of document A/CONF.62/62 on the organization of work of the Conference. Those issues are: (i) régime of islands; and (ii) enclosed and semi-enclosed seas. In the debate on Part VIII, some delegations emphasized the importance of the legal régime of islands in matters relating to the delimitation of maritime spaces, while others maintained that this subject should be dealt with in connection with articles 15, 74 and 83 of the informal composite negotiating text, which refer specifically to problems of delimitation and the discussion of which is assigned to Negotiating Group 7 ..." 152/

63. At its 108th plenary meeting, on 15 September 1985, the Conference adopted a recommendation by the General Committee which stipulated, in particular, that the objective of the next session of the Conference "should be the conclusion of informal negotiations and revision of the Informal Composite Negotiating Text" and that "the Negotiating Groups established by the Conference at its seventh session and referred to in document A/CONF.62/62 should resume this work at the very outset of the eighth session." 153/

F. Eighth session

(Geneva, 19 March-27 April 1979; resumed eighth session, New York, 19 July-24 August 1979)

64. The work undertaken at the seventh and the resumed seventh session was continued during the eighth session. In this respect, at the close of the 116th plenary meeting, on 27 April 1979, following discussions in plenary of the reports submitted by the chairmen of committees and negotiating groups, and the report of the President on the informal plenary discussion on settlement of disputes, the President and the chairmen of the main committees, together with the Chairman of the Drafting Committee and the Rapporteur-General, met in conformity with paragraphs 10 and 11 of the decisions taken by the Conference at its 90th meeting on the organization of work (document A/CONF.62/62) to consider the revision of the informal composite negotiating text.

65. The result of that revision appears in the Informal composite negotiating text-revision 1, document A/CONF.62/WP.10/Rev.1 of 28 April 1979) which was issued after the suspension of the eighth session. As far as the régime of islands was concerned, an explanatory memorandum to that document indicates that:

> "The team agreed that it was most important that the President should stress, in this explanatory memorandum, that it had been able to address itself only to the texts placed before the Plenary by the respective Chairmen and by the President and that, accordingly, as the President had already recognized in the Plenary, many issues and proposals had not yet received adequate consideration and should form the subject of further negotiation during the resumed session.
>
> "These included the other issues referred to in paragraph 6 of A/CONF.62/62 which mentioned, inter alia, the régime of islands."

66. In the informal composite negotiating text-revision 1, the régime of islands is dealt with in Part VIII, which follows closely the language of the previous draft (see para. 48 above) except for paragraph 2, which refers to "the provisions of this Convention" instead of "the provisions of the present Convention."

67. As to the status of revision 1 of the informal composite negotiating text, the explanatory memorandum by the President referred to above stated that:

> "The President recalled that he had very clearly stressed in the plenary that all outstanding proposals and issues would receive further consideration and that the revision contemplated would remain a negotiating and not a negotiated text. It was accordingly agreed that the proper description of the status of the text could best be conveyed by the title 'informal composite negotiating text/Rev.1.'"

68. A search of the archives of the Office for Ocean Affairs and the Law of the Sea reveals that, among the informal proposals submitted during the resumed eighth session, the following proposal submitted by Ireland (document C.2/Informal Meeting/46 of 17 August 1979) is relevant:

"Article 121

"Paragraph 2, line 1:

"For except as provided for in paragraph 3 read without prejudice to the provisions of articles 15, 74 and 83 and except as provided for in paragraph 3."

69. A second revision of the informal composite negotiating text was contemplated towards the end of the resumed eighth session, but as the President stated:

> "Time and circumstances did not, however, permit the attainment of this objective and the Conference was unable to proceed beyond receiving the reports contained herein. It must be emphasized that the Conference did not have the time to discuss these results in such a manner as to permit assessment in conformity with document A/CONF.62/62. As a consequence, the question of their incorporation in a second revision of the negotiating text did not arise, and the Conference therefore decided at its 120th plenary meeting, held on 24 August 1979, merely to record the results of the work accomplished during the resumed eighth session. They are included in this memorandum in order to preserve them in convenient form and thereby facilitate the preparation of the second revision.
>
> "The second revision was, by decision of the Conference at its 118th plenary meeting, held on 23 August 1979, deferred to the end of the fourth week of the ninth session following a formal discussion in plenary which will enable delegations to place their positions on record, both in regard to proposed revisions and the entire package, before the preparation and the adoption of the revised negotiating text as a draft convention." 154/

70. As far as the work of the Second Committee was concerned, in one of the reports 155/ to which the President referred, it was indicated that:

> "There were two informal meetings of the Second Committee devoted to other matters than those assigned to negotiating groups 4, 6 and 7. The items considered were dealt with in accordance with the numbering of the articles of the revised informal composite negotiating text. The items were the following: [inter alia]
>
> "...
>
> "Article 121
>
> "Informal suggestion by Ireland (C.2/Informal Meeting/46) to replace, in paragraph 2, the words 'except as provided for in paragraph 3', by 'without prejudice to the provisions of articles 15, 74 and 83 and except as provided for in paragraph 3'."

G. Ninth session

(New York, 3 March-4 April 1980; resumed ninth session, Geneva, 28 July-29 August 1980)

71. At the plenary meeting which took place during the first part of the ninth session, delegations were given an opportunity to make statements on the projected second version of the informal composite negotiating text. At those meetings, several delegations briefly addressed the question of the régime of islands.

(a) The representative of Ireland said that, in the view of his delegation, the substantive connection between the delimitation provisions and article 121 on the régime of islands was not adequately reflected in the revised negotiating text, and that aspect of the work of the Conference must be carefully looked at again. 156/

(b) The representative of Greece noted that the fundamental principle of international law embodied in article 121, concerning the régime of islands, had remained consistently unchanged. No connection had ever been established between that article and the provisions on delimitation, and none could be established. 157/

(c) The representative of Turkey indicated that article 121 was out of harmony with both international law and articles 15, 74 and 83, and, consequently, his delegation could not accept the present wording of the article and felt that serious efforts should be made to remedy the situation and reach a consensus. 158/

(d) The representative of France stated that his delegation regretted the fact that article 121, paragraph 3, concerning the régime of islands had not been deleted. 159/

(e) The representative of Iraq observed that crucial problems such as the régime of islands required further attention since they hampered the delimitation of maritime frontiers and freedom of navigation in international waterways. 160/

(f) The representative of Cyprus indicated that attempts to change the text of article 121 on the well-established régime of islands would meet with the strongest opposition from his delegation, which represented an island nation. 161/

(g) The representative of Algeria made the point that, with regard to the régime of islands, article 121 of the revised negotiating text was extremely dangerous, and could lead to serious disputes if applied, as tiny islands might gain more importance than individual States. He hoped that the Conference would have an opportunity to return to the issue, in order to prevent the presence of islands affecting delimitation. 162/

72. Turning to the work undertaken by the Second Committee during the first part of the ninth session, a report of the Chairman to the plenary indicates that a number of "compromise formulae" contained in that report were to be considered as offering a "substantially improved prospect of consensus as envisaged in document A/CONF.62/62". 163/ No draft provision relating to the régime of islands was contained in that list.

73. Towards the end of the first part of the ninth session, upon completion of the formal debate in plenary, the Collegium found itself in a position to carry out the second revision of the informal composite negotiating text. After a review of a series of reports such as the report of the Chairman cited in the previous paragraph and having taken note of the debate on them in plenary, the Collegium agreed that all the proposals such as those submitted by the Chairman of the Second Committee should be incorporated in the revision. The result of this work appears in the Informal composite negotiating text-revision 2, document A/CONF.62/WP.10/Rev.2 of 11 April 1980. In that document the régime of islands is addressed in Part VIII, which follows exactly the wording of the previous draft (see para. 50 above).

74. As to the status of revision 2 of the informal composite negotiating text, in his explanatory memorandum attached to that document the President of the Conference stated that:

> "In the explanatory memorandum on revision 1 of the informal composite negotiating text (A/CONF.62/WP.10/Rev.1) it was recalled that the President had reiterated that 'the very nature of the concept of a package deal required that no delegation's position on a particular issue should be treated as irrevocable until at least all the elements of the package had formed the subject of agreement and that, therefore, every delegation had the right to reserve its position on any particular issue until it had received satisfaction on other issues which it considered to be of vital importance to it'.
>
> "To avoid any misunderstanding as to the status of the second revision which is now presented, the President would wish to emphasize that it must be regarded as a negotiating text which provides, in the best judgement of the Collegium, a better basis of negotiation and one that offers a substantially improved prospect of a consensus."

75. At its 130th plenary meeting, the Conference had to take a decision on its organization of work for the resumed ninth session. Accordingly, it was decided that, in particular,

(a) As a first stage, negotiations should be undertaken with a view to resolving the remaining outstanding issues;

(b) Thereafter, a general debate should take place in order to allow the delegations to express their opinion;

(c) Upon completion of the general debate, the Collegium should meet to prepare the third revision of the informal composite negotiating text. 164/

76. The negotiations on the outstanding issues in the three main committees were concluded on 23 August 1980. The results of those negotiations were discussed during the general debate on 25, 26 and 27 August. During those meetings, several delegations expressed their views on the régime of islands.

(a) (i) The representative of Venezuela said that his country had serious objections to the provision in article 121, paragraph 3, which established an exception to the general rule set out in paragraph 2 of that article. The retention of such a provision would institute discrimination between the continental and insular parts of the territory of a State. Furthermore, that exception created serious difficulties of interpretation. The term "rocks" was in neither the legal nor the scientific vocabulary and might refer to any island formation. Moreover, the two criteria which would determine the exceptional treatment were ambiguous and very relative. For a variety of reasons, mostly economic, a number of islands which were formerly uninhabited were now inhabited and vice versa. If the provision was to be maintained in the final text, his delegation would interpret it as meaning that the capacity of an island to sustain human habitation referred not only to the abstract possibility of habitation, but also to the practical situation, since the continental or insular territory of a State could be developed to suit the interests of the State concerned.

(ii) Similarly, Venezuela considered that the expression "economic life of their own" should be interpreted as covering not complete self-sufficiency, but the existence of national resources which could be exploited economically or the possibility of other uses. In those circumstances, the complete deletion of article 121, paragraph 3, from the third revision would, in his delegation's opinion, be the only way to solve such problems and avoid disputes. 165/

(b) The representative of Iran indicated that, in principle, his country opposed any distinction between natural land areas which were above water at high tide. In a spirit of compromise, however, his delegation would agree to the sole article in Part VIII, but not without reserving the right to reject any extensive interpretation to which that article might give rise in the future. 166/

(c) The representative of Algeria pointed out that the Conference had considered the question of islands to be one of the most important and most controversial. It was still important and controversial because article 121, paragraph 2, had not been amended, even though many delegations had requested an amendment. The granting of an economic zone to islands belonging to mainland States in semi-enclosed seas or in narrow maritime areas led to imbalances which were unacceptable to some coastal States. The recognition of the right of islands to have an economic zone should necessarily be accompanied by a recognition of the interests of other States and hence of measures which would safeguard the rights of those States. 167/

(d) The representative of the United Kingdom said that his delegation had reservations with regard to article 121, paragraph 3, on the régime of islands, since it objected to any arbitrary distinction between the parts of the territory of the coastal State. 168/

(e) The representative of the Dominican Republic stated that his delegation supported the current text of article 121 concerning islands. 169/

(f) The representative of Ethiopia said that his delegation endorsed the provisions of article 121. 170/

(g) The representative of Fiji declared that his delegation welcomed the fact that the integrity of the legal régime of islands, which was of particular interest to the countries of the South Pacific region, had been largely maintained. The integrity of oceanic islands had not been subordinated to the problems of islands having a special situation that might have some bearing on the question of delimitation of boundaries. 171/

(h) The representative of Cyprus stated that the article on the régime of islands offered a minimum solution acceptable to his delegation. 172/

(i) The representative of Dominica made the point that, being an island, Dominica was particularly interested in the régime of islands. The provisions relating to the territorial sea and the exclusive economic zone took into account, in its view, the various interest groups concerned and were favourable to its economic future. The delimitation of maritime boundaries should be based on geographical and not political factors. From the geographical standpoint, however, Dominica was disadvantaged. The Caribbean Sea, like some other seas in the world, was studded with islands in close proximity, each with independent administrations. The islets, bays and rocks interspersed among those islands came under the jurisdiction of those various administrations. It followed that the delimitation of maritime boundaries in the Caribbean posed delicate problems, and his delegation held the view that agreements must be concluded among the administrations concerned to surmount those difficulties. Whatever the content of those agreements, however, they should not in any way prejudice Dominica's right in international law to determine its territorial waters and exclusive economic zone in accordance with the text of the convention. In that connection, article 121, paragraph 3, which stated that "rocks which cannot sustain human habitation or

economic life of their own shall have no exclusive economic zone or continental shelf", was quite clear and acceptable to his delegation, which laid emphasis on the words "of their own" and interpreted the word "or" in the first line to mean "and". Any attempt to delete paragraph 3 from article 121 would serve only to complicate the already formidable problem of delimiting maritime boundaries in the Caribbean. Hence, the provision must be maintained. To give "rocks" a competence to establish an exclusive economic zone would create a disturbing precedent which could be based only on political factors. 173/

(j) The representative of Turkey declared that, with regard to the régime of islands, his delegation was one of the sponsors of the informal proposal contained in document C.2/Informal Meeting/21, which was closely linked with the issue of delimitation. The effect of that proposal would not be to cast doubt in any way on the rights of islands; its only aim was, in cases where islands might have a negative influence on delimitation, to codify a principle which was already well established in international law. Since the very first conference on the law of the sea, islands had always been regarded as heading the list of elements which created special circumstances, both in legal theory and practice and in State practice. One of the gaps in the informal composite negotiating text, as in the previous system established in 1958, was precisely related to the fact that article 121 was silent on that important aspect of the régime of islands. A useful contribution would be made to codification by establishing the necessary link between the article concerned and articles 15, 74 and 83. 174/

77. With a view to effecting the third revision of the informal composite negotiating text, following the general debate the Collegium took note of the results of the negotiations during the resumed session and the statements made in the course of the general debate. The conclusions reached by the Collegium on the third revision of the informal composite negotiating text are reflected in the Draft Convention on the Law of the Sea (Informal Text), document A/CONF.62/WP.10/Rev.3 of 22 September 1980. In that text, the régime of islands is dealt with in Part VIII, which follows exactly the wording of the preceding draft (see para. 50 above).

78. As to the status of that revised text, in a memorandum attached to the document (A/CONF.62/WP.10/Rev.3/Add.1 of 28 August 1980), the President indicated that:

> "The Collegium also decided that, having regard to the inappropriateness of referring to the revised text as a final negotiating text, since there were some outstanding issues that needed further negotiations, it seemed more appropriate and advisable to give the revised text the title 'Draft Convention (Informal Text)'. This text like its predecessor will be informal in character. It is a negotiating text and not a negotiated text, and does not prejudice the position of any delegation."

H. Tenth session

(New York, 9 March-16 April 1981; resumed tenth session, Geneva, 3-28 August 1981)

79. During the first part of the tenth session, the Second Committee held four informal meetings in order to comply with the wish expressed by a number of delegations for an opportunity to refer to certain questions within the mandate of that Committee. As summed up by the Chairman of the Committee in his report to the plenary, the following conclusions may be drawn from the discussions held thereto:

> "(a) There is a virtual consensus on the fact that it is not desirable or practical to reopen discussion on the basic Committee issues, which, while they do not in all cases represent a consensus, are the formulae that come closest to commanding general agreement and that have been arrived at through long and arduous negotiations.
>
> "(b) It is possible to introduce, at such time as the Conference may decide, minor changes designed to supplement, clarify or improve the draft convention, always provided, of course, that they command the necessary support and will help to facilitate acceptance of the text by the largest possible number of delegations.
>
> "(c) Although some of the draft articles, as now worded, present difficulties of various kinds for some delegations, the draft as a whole is acceptable to the great majority of delegations. There are actually, in the view of a significant number of delegations, very few questions that require further discussion and negotiation." 175/

80. During the second part of the tenth session, at its 153rd plenary meeting, on 24 August 1981, the Conference adopted a list of recommendations made by the General Committee 176/ in which it is stipulated, in particular, that:

> "The General Committee recommends that the present text of the draft convention contained in A/CONF.62/WP.10/Rev.3 and Corr. 1 and 3 be revised at the end of this session. In accordance with A/CONF.62/62, the revision will incorporate the recommendations of the Drafting Committee approved by the informal plenary and the decisions taken by the informal plenary Conference on the sites of the International Sea-Bed Authority and the International Law of the Sea Tribunal. In addition, the revision will take into account the results of the consultations and negotiations conducted during this session and which, when presented to the plenary Conference, satisfy the criteria in A/CONF.62/62.

"The General Committee recognizes that the revised text should now have a higher status than the present text. Therefore, the General Committee proposes to delete the words 'informal text' and the revised draft convention will bear the symbol A/CONF.62/L.78. The implication of the General Committee's proposal is that the revised draft convention would no longer be an informal text. It will be the official draft convention on the Law of the Sea of the Conference subject, however, to the following three conditions:

"Firstly, the door would be kept open for the continuation of consultations and negotiations on certain outstanding issues. The results of these consultations and negotiations, if they satisfy the criteria in A/CONF.62/62, will be incorporated in the draft convention by the Collegium without the need for formal amendments.

"Secondly, the Drafting Committee will complete its work and its further recommendations, approved by the informal plenary Conference, will be incorporated in the text.

"Thirdly, in view of the fact that the process of consultations and negotiations on certain outstanding issues will continue, the time has, therefore, not arrived for the application of rule 33 of the rules of procedure of the Conference. At this stage, delegations will not be permitted to submit amendments. Formal amendments may only be submitted after the termination of all negotations." 177/

81. The results of the work undertaken pursuant to that decision were incorporated in the Draft Convention on the Law of the Sea, document A/CONF.62/L.78 of 28 August 1981. In that text, the régime of islands is dealt with in Part VIII, which follows exactly the language of the previous draft (see para. 50 above).

82. At its 154th plenary meeting on 28 August 1981, in view of its final decision-making session, the Conference adopted its programme of work for the eleventh session 178/ on the basis of recommendations made by the Collegium (A/CONF.62/L.80) in accordance with paragraphs 4 and 5 of A/CONF.62/BUR.14. That programme stipulates, in particular, that:

(a) During the first week of the session, the Conference would continue consultations and negotiations on pending issues;

(b) The informal plenary Conference would meet to process the recommendations of the Drafting Committee resulting from its final intersessional meeting;

(c) Thereafter, the plenary Conference would meet to discuss the results of the consultations and negotiations. Later on, in the light of the plenary debate and taking into account the criteria established in document A/CONF.62/62, the President of the Conference, the chairmen of the committees, the Chairman of the Drafting Committee and the Rapporteur-General would meet and decide on the incorporation of the results of the consultations and negotiations into the draft convention;

(d) Delegations would be given the opportunity to submit formal amendments to the draft convention and, eventually, to make statements on these amendments;

(e) At a final stage of this process the Conference would have to determine whether all efforts at reaching general agreement had been exhausted. Thereafter it would adopt the convention, the text of the draft resolution on the establishment of the Preparatory Commission, the final act and any other pertinent decisions.

I. Eleventh session

(New York, 8 March-30 April 1982; resumed session, New York, 22 and 24 September 1982; final session, Montego Bay, Jamaica, 6-10 December 1982)

83. During the first part of the eleventh session, the Second Committee held three informal meetings, on 18, 19 and 24 March, in order to give all delegations an opportunity to raise any issue or question within the competence of that Committee, and to make informal suggestions for amendments. In his report to the plenary on those meetings, the Chairman of the Second Committee indicated that:

(a) Among the informal proposals submitted thereto, there were some proposals made by the delegation of Peru concerning certain drafting changes and rearrangement of some articles of Parts VII and VIII (C.2/Informal Meeting/68). However, it had not been possible to reach a consensus on those proposals;

(b) In conclusion, "there is a real consensus on the need to preserve the fundamental elements of the parts of the convention which are within the competence of the Second Committee and that except for very few issues the current text of this part of the draft convention constitutes a satisfactory solution of compromise. As I said at the last of the meetings held at this stage, this does not exclude the possibility that in the next stages of the Conference changes can be introduced which could contribute to facilitating adoption of the convention by the greatest possible number of participating States." 179/

84. During the same period, delegations were given an opportunity to state their views in plenary. At those meetings several delegations addressed the question of régime of islands.

(a) The representative of Venezuela indicated that, regarding the régime of islands, he was again compelled to raise serious objections to article 121, paragraph 3, of the draft convention. That provision was objectionable because it introduced a distinction between parts of a nation's territory, and that could not be justified on principle or on grounds of equity. In the first place, taking into account the principle that national territory was one and indivisible, just as the sovereignty of a State was one and indivisible, it could not be held that national territory gave rise to rights in some parts and not in others. Paragraph 3 was especially prejudicial to island States and continental States whose continental territory was directly prolonged into the sea by an island territory. That situation was very different from that of maritime States which, for historical reasons, had annexed often very small islands in the middle of the oceans, located at a great distance from their principal territory. Such a provision was unjust and arbitrary since it would necessarily lead to drastically different treatment for very similar island formations. As for the practical application of article 121, paragraph 3, he stressed that any attempt to classify island territories was doomed to failure because of the impossibility of establishing satisfactory criteria. He had on other occasions underscored the obscurity and ambiguity of each one of the three paragraphs of article 121, and he again asked where the subtle line would be drawn between the islands of paragraph 1 and the rocks of paragraph 3. Some States might recognize the right of a particular island to be considered as having an exclusive economic zone and a continental shelf; others might argue that it was only a rock, in accordance with paragraph 3 of article 121. Article 121 should therefore be deleted. 180/

(b) The representative of Iran said that his delegation could not support the definition of islands given in the draft convention. That definition was inequitable, for any distinction among islands could lead to disputes and serious problems in the future. 181/

(c) The representative of Turkey pointed out that article 121 was unacceptable in its current form and his country maintained its right to reserve its position on it. 182/

(d) The representative of the Libyan Arab Jamahiriya said that his delegation believed that the régime governing islands had been given insufficient consideration and, in particular, that the study on that régime should make a distinction between islands situated in closed seas and islands in open seas. 183/

(e) The representative of Algeria pointed out that, given that the search for equity was at the root of the Conference, it was regrettable that the régime of islands resulted, in certain cases, in a situation which was not equitable. By giving all islands the same maritime space and advantages, without taking account of the harmful effects on the delimitation of sea borders with neighbouring States, article 121 ran contrary to the general spirit of the draft convention. A distinction should be made between islands which were not affected by delimitation agreements and those which were. He stressed the contradiction in claiming equity in cases of delimitation per se while excluding it in the case of certain islands which created unacceptable distortions, particularly in narrow or semi-enclosed seas. He felt the Conference had been wrong to separate delimitation and the régime of islands, which were really two aspects of the same problem. 184/

(f) The representative of Greece said that the article on the régime of islands was of crucial importance and should not be touched. Provisions of such importance should not be deprived of their effectiveness either through amendments or through the formulation of reservations. In that area, his delegation was opposed to reservations. 185/

(g) The representative of the United Republic of Cameroon pointed out that the terms of article 121 had presented some difficulties. Although his delegation had accepted the current definitions in a spirit of compromise, it considered that the delimitation of the continental shelf of an island should be based on the same criteria as those provided in article 83. 186/

(h) The representative of Cyprus indicated that the compromise achieved by the Second Committee on the régime of islands should not be upset, since it offered the best prospect of consensus. 187/

85. In accordance with its programme of work referred to in paragraph 82 above, the Collegium took a decision on the incorporation of the results of the consultations and negotiations into the draft convention. The memorandum issued by the Collegium 188/ did not include any amendments to Part VIII.

86. Towards the end of the first part of the eleventh session, and in accordance with the programme of work, delegations were given an additional opportunity to submit formal amendments to the basic texts of the conference contained, respectively, in documents A/CONF.62/L.78; A/CONF.62/L.93 and A/CONF.62/L.94, which were the only texts against which amendments could be moved. 189/ Among the amendments submitted thereto, attention should be paid to the following:

(a) Romania: amendment to article 121. 190/

"Article 121: add a new paragraph 4 reading as follows:

"'4. Uninhabited islets should not have any effects on the maritime spaces belonging to the main coasts of the States concerned.'"

(b) United Kingdom of Great Britain and Northern Ireland: amendments. 191/

"...

"Article 121: delete paragraph 3."

87. Thereafter, pending a vote on those amendments, delegations were given an opportunity to make statements relating thereto.

(a) The representative of Greece indicated that his delegation supported notably the amendment proposed by the United Kingdom (document A/CONF.62/L.126) concerning article 121 but opposed the amendment in document A/CONF.62/L.118. 192/

(b) The representative of Singapore called upon the United Kingdom to withdraw its proposal in document A/CONF.62/L.126. 193/

(c) The representative of Peru said that, among the proposed amendments, there were some which contained new proposals or which reflected ideas which had considerable support. Among them was document A/CONF.62/L.118. There were also draft amendments which reintroduced ideas rejected either explictly or tacitly by the majority of delegations; document A/CONF.62/126 fell into that category. 194/

(d) The representative of the United Kingdom said that his delegation was proposing that article 121, paragraph 3, should be deleted, since there was no reason to discriminate between different forms of territory for the purposes of maritime zones. There was no basis for such discrimination in international law and it would conflict with the rights of States in respect of their territories. For the same reasons the United Kingdom would oppose the addition of a new paragraph to article 121, as proposed by Romania (A/CONF.62/L.118). 195/

(e) The representative of Japan indicated that, with regard to the two proposed amendments contained in document A/CONF.62/L.126, submitted by the United Kingdom, his delegation could support the proposal to delete paragraph 3 of article 121, since such an amendment would have the effect of eliminating the illogicality of the existing text. His delegation could not, however, support an amendment on the same subject proposed by Romania in document A/CONF.62/L.118. 196/

(f) The representative of Romania made the point that the question of islands was important both for the delimitation of maritime spaces between coastal States and for the determination of the international Area. The tremendous diversity among islands gave some idea of the complexity of the problem, a problem for which generalized solutions were no longer adequate. State practice, customary law and international legal theory showed that there was widespread agreement on the need to distinguish between rocks and islets which could not sustain human habitation or economic life of their own, on the one hand, and islands proper, on the other. To subject all types of islands to a single régime would be unjust and inequitable. His delegation had given careful consideration to all delegations' views on the subject and had adopted a flexible position, presenting proposals which took into account the legitimate rights and needs of all interested States. The item had not been discussed properly, however, and some delegations had even insisted that it must be ~~settled in~~ conjunction with the delimitation of the territorial sea. It was hardly surprising, therefore, that article 121 as currently formulated was not satisfactory to many interested States. Paragraph 3 of that article referred only to rocks, while any reference to special circumstances had disappeared from the draft convention. The amendment presented by his delegation was designed to improve the content of article 121 by adding a new paragraph which provided that "uninhabited islets should not have any effects on the maritime spaces belonging to the main coasts of the States concerned". Such a provision was in accordance with the practice of many States and with existing international judicial practice, and would prevent any State from encroaching on the maritime zones of another State by invoking the existence of uninhabited islets in the delimitation area. 197/

(g) The representative of the German Democratic Republic said that most of the amendments under consideration contained proposals that had earlier failed to gain general approval. For instance, the proposal in document A/CONF.62/L.126 that paragraph 3 of article 121 should be deleted would entail a substantive change of the principles underlying the concepts of the exclusive economic zone and the continental shelf. Its effect would be to restrict the fishing rights of all States in large areas of the high seas and to place large parts of the Area under the national jurisdiction of a few coastal States. Such a proposal, being made by the very States which in any case were benefiting the most from the provisions on the exclusive economic zone and the continental shelf, was nothing short of astonishing to the land-locked and geographically disadvantaged States. His delegation was absolutely opposed to the amendments proposed in document A/CONF.62/L.126. Further, his delegation also rejected the amendments put forward in document A/CONF.62/L.118. 198/

(h) The representative of the USSR said that his delegation was opposed to the amendments proposed in document A/CONF.62/L.118 and L.126 since they would destroy the compromise reached. 199/

(i) The representative of Brazil said that two amendments concerning uninhabited islets had been submitted, in documents A/CONF.62/L.118 and L.126. His delegation agreed with the United Kingdom that there was no logical explanation for paragraph 3 of article 121 and would therefore favour the United Kingdom proposal. The meaning of the Romanian proposal was not clear, and his delegation would abstain if it was put to the vote. 200/

(j) The representative of Malta indicated that his delegation was opposed to the amendment contained in document A/CONF.62/L.118. 201/

(k) The representative of Algeria said that his delegation supported the amendment contained in document A/CONF.62/L.118 but opposed the amendment found in document A/CONF.62/L.126. 202/

(l) The representative of Mozambique pointed out that his delegation was ready to support some amendments as contained in document A/CONF.62/L.118. 203/

(m) The representative of Korea said that his delegation had difficulty in supporting the deletion of article 121, paragraph 3, proposed in document A/CONF.62/L.126, because it undermined the delicate balance achieved through the long process of negotiations on the régime of islands. 204/

(n) The representative of Denmark made the point that the proposal in document A/CONF.62/L.126 to delete article 121, paragraph 3, would also create grave obstacles in the search for a consensus. Without such a provision tiny and barren islands, looked upon in the past as mere obstacles to navigation, would miraculously become the golden keys to vast maritime zones. That would indeed be an unwarranted and unacceptable consequence of the new law of the sea. 205/

(o) The representative of Trinidad and Tobago indicated that he was opposed to the amendment put forward by Romania (A/CONF.62/L.118) for the addition of a paragraph to article 121 on uninhabited islets, and equally opposed to the deletion suggested by the United Kingdom (A/CONF.62/L.126) of article 121, paragraph 3; it would be most undesirable if an uninhabited mid-ocean rock could create entitlement to a surrounding 200-mile exclusive economic zone. 206/

(p) The representative of Tunisia said that article 121 was properly balanced in its present form and should not be changed. She therefore urged the sponsors of amendments affecting it not to insist, so that the Conference could successfully conclude its work in time. 207/

(q) The representative of Portugal pointed out that his delegation reiterated its support for the United Kingdom proposal (document A/CONF.62/L.126) that article 121, paragraph 3, should be deleted. It would not be sound international legal practice to subject different parts of the same territory to different legal régimes, especially if they were under the same sovereignty. For the same reason, it was opposed to the amendment proposed in document A/CONF.62/L.118. 208/

(r) The representative of Colombia said that his country was opposed to the amendments contained in document A/CONF.62/L.126 because article 121 reflected a unique and delicate balance and would help to preserve the common heritage in the oceans. A simple look at the map of the Pacific Ocean would show what would result from the deletion of article 121, paragraph 3. 209/

(s) The representative of Iran stated that his delegation was opposed to any attempt to modify the well-established definition of the term "island" in international law. Any attempt to make legal distinctions on the basis of size and population would only give rise to problems later. Iran, therefore, supported the United Kingdom proposal in document A/CONF.62/L.126 to delete article 121, paragraph 3. 210/

(t) The representative of Uruguay said that his delegation found unacceptable the amendments contained in documents A/CONF.62/L.118 and L.126 since they sought to introduce changes regarding points on which no further concessions were possible. 211/

(u) The representative of Ecuador indicated that the United Kingdom proposal to delete article 121, paragraph 3 (document A/CONF.62/L.126) would be useful in producing a clearer and more precise text. However, his delegation could not support the amendment submitted by Romania (document A/CONF.62/L.118) since it would affect the delicate balance and negate the purpose of the long process of negotiations. 212/

(v) The representative of the Ukrainian SSR said that it was firmly opposed to the amendment in document A/CONF.62/L.118. 213/

(w) The representative of Mongolia pointed out that his delegation rejected the amendments contained in document A/CONF.62/L.126. 214/

(x) The representative of the Byelorussian Soviet Socialist Republic said that it could not support the amendments in documents A/CONF.62/L.118 and L.126. 215/

(y) The representative of Pakistan said that his delegation would not be able to support the amendment to article 121 proposed in document A/CONF.62/L.126. 216/

(z) The representative of Zambia said that his delegation supported the improvements to the convention proposed in document A/CONF.62/L.126. 217/

88. In addition, several delegations, in some cases the same as those mentioned above, expressed their views in written statements. In particular:

(a) In a letter dated 22 April 1982 from the representative of Australia to the President of the Conference, 218/ the Australian delegation indicated that it opposed the proposed amendments in document A/CONF.62/118, while it could support those contained in document A/CONF.62/126.

(b) A statement by the delegation of Colombia dated 1 April 1982 219/ reads in part as follows:

"..."

"We note that the position of the Chairman of the Second Committee was ratified in the debate at the plenary meeting and that there is now no possibility that any reopening of [article 121] could lead to improved texts or bring another consensus closer.

"...

"Article 121, on islands, has been discussed in the Second Committee at every session. In eight years there was never once a suggestion by the Chairman of the Second Committee that would give grounds for thinking, when negotiations were over, that change might improve the prospects for a consensus such as exists today and has secured ratification.

"...

(c) A statement by the delegation of Turkey dated 17 April 1982 220/ indicated that the Turkish delegation was strongly opposed to the deletion of paragraph 3 of article 121 as proposed by the United Kingdom in A/CONF.62/L.126.

(d) A statement by the delegation of Colombia dated 16 April 1982 221/ indicated that Colombia was opposed to the deletion of article 121, paragraph 3, as proposed in document A/CONF.62/L.126.

89. In order to assess the extent of support for the proposed amendments, the Chairman of the Second Committee, at the request of the President, undertook consultations. As indicated by the Report of the President to the Conference in accordance with rule 37 of the rules of procedure 222/ and by the statement on the work of the Second Committee from the fourth to the eleventh sessions of the Conference, 223/ most of the amendments, including those relating to article 121, were withdrawn or not pressed to a vote.

90. At its 174th meeting, on 23 April 1982, 224/ the Conference, in accordance with its rules of procedure, determined that all efforts at reaching general agreement had been exhausted. At the request of one delegation, the Conference had to resort to voting on the adoption of the Convention together with resolutions I to IV, forming an integral whole. At the 182nd plenary meeting, on 30 April 1982, 225/ the Convention together with resolutions I to IV were adopted subject to drafting changes which would be approved by the Conference at the resumed eleventh session.

91. During the 182nd plenary meeting, some delegations briefly expressed their points of view on the Convention which had just been adopted. In particular, the delegation of Venezuela indicated that Venezuela could not accept articles 15, 74, 83 and 121, paragraph 3, in so far as those provisions applied to the delimitation of maritime and underwater areas between States with opposite or adjacent coasts. 226/

92. The Second Committee held its 59th and closing meeting on 29 April 1982 227/. At that meeting, a statement on the work of the Second Committee from the fourth to the eleventh sessions of the Conference 228/ was submitted as the only document made available to that Committee since 27 April 1979. At its 182nd meeting, the Conference decided that plenary meetings should be held in New York from 22 to 24 September in order to consider the recommendations of the Drafting Committee. 229/

93. At the resumed eleventh session, on 24 September 1982, the Chairman of the Drafting Committee introduced his report to the plenary for its consideration. 230/ That report did not contain any recommendation on article 121.

94. After the closing of the resumed eleventh session, the United Nations Convention on the Law of the Sea (document A/CONF.62/122 of 7 October 1982) 231/ was published. In that document, the régime of islands is dealt with in Part VIII, which follows exactly the language of the previous draft (see page 1 of the present report).

95. At the final part of the eleventh session, which took place at Montego Bay from 6 to 10 December 1982, delegations were given a last opportunity to state their views in plenary before the signing of the Convention. Exerpts of the statements of the representatives of several delegations are presented below.

(a) The representative of Cyprus:

"As an island State, in common with other island States and States which consist of continental and insular territory, we have argued strenuously against the attempt to discriminate against and diminish the position of islands by creating artificially novel distinctions based on legally untenable considerations such as size, population, geographical location and so forth. Therefore, we are fully satisfied with the Convention's provision under Part VIII, régime of islands, that 'the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.' (A/CONF.62/122, art. 121, para. 2)." 232/

(b) The representative of Romania:

"The principles and the criteria embodied in the text of the Convention form a general framework that must be applied in keeping with international law, the jurisprudence in the matter and the practice of States. In this sense, reaching an equitable solution presupposes taking into account all the factors relevant to the zone being delimited, including the fact that small and uninhabited islands lacking their own economic life cannot in any way influence the delimitation of the maritime space belonging to the main coastlines of the coastal States." 233/

(c) The representative of Turkey:

"~~Article 121,~~ on the régime of islands, is in our opinion an article of a general nature which does not predetermine the maritime space to be allocated to the islands in delimitation. The presence of islands in the area to be delimited is, as I have already mentioned, one of the relevant circumstances to be taken into account in order to arrive at an equitable solution.

"The maritime spaces of the islands situated in the areas to be delimited are determined by the application of equitable principles. Hence article 121 is not applicable to the islands located in the maritime areas which are subject to delimitation.

"... That view is also confirmed in the Arbitral Tribunal's decision on the continental shelf delimitation between France and the United Kingdom, in which islands are given partial effect and channel islands belonging to the United Kingdom are enclaved by the French continental shelf, as well as in the Tunisia-Libyan Arab Jamahiriya case, in which one Tunisian island is completely disregarded and another is given half effect." 234/

(d) The representative of Colombia:

"Article 121 defines what is an island and the difference between islands and rocks. Islands have a right to a territorial sea, a continental shelf and an exclusive economic zone. Rocks are entitled only to a territorial sea since they cannot sustain human habitation or economic life of their own. This is logical. It is a "package" which results from the view that these maritime spaces have been granted to benefit the inhabitants, with an economic concept. Any other interpretation would distort the concept." 235/

(e) The representative of France:

"... I should like to mention the positive solutions achieved with respect to the régime of islands ..." 236/

(f) The representative of the Islamic Republic of Iran:

"Islets situated in enclosed and semi-enclosed seas which potentially can sustain human habitation or an economic life of their own but which, owing to climatic conditions, resource restriction or other limitations, have not yet been put to full development, fall within the provisions of paragraph 2 of article 121, concerning the régime of islands, and therefore have full effect in the boundary delimitation of various maritime zones of the interested coastal States." 237/

(g) The representative of the Netherlands Antilles:

"Being comprised of six islands, the Netherlands Antilles finds great support in the article on the régime of islands, which stresses the fact that islands and other land territories should be treated as equals when determining their respective territorial sea, contiguous zone, exclusive economic zone and continental shelf." 238/

(h) The representative of Greece:

"It should be stressed at this time that all the clauses have been accepted by near-consensus, since almost all the countries that abstained in the vote when the Convention was adopted stated that they accepted all the parts of the Convention, with the exception of Part XI, on the sea-bed. If I am not mistaken, the same is true for the four countries that voted against it. Given this fact, and also the practice of States, it is clear that these provisions can be, and practically speaking are, considered to be already part of customary international law. ... That also goes for the articles referring to freedom of navigation and the régime with respect to islands, and other articles." 239/

96. The United Nations Convention on the Law of the Sea was closed for signature on 9 December 1984, having received a total of 159 signatures. The Convention will enter into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession. As at 17 June 1987, 32 instruments of ratification had been deposited with the Secretary-General.

97. Upon signature of the Convention and in accordance with its article 310, 240/ the following declarations were made with respect to Part VIII of the Convention: 241/

(a) Islamic Republic of Iran:

"In accordance with article 310 of the Convention on the Law of the Sea, the Government of the Islamic Republic of Iran seizes the opportunity at this solemn moment of signing the Convention to place on the records its 'understanding' in relation to certain provisions of the Convention. The main objective for submitting these declarations is the avoidance of eventual future interpretation of the following articles in a manner incompatible with the original intention and previous positions or in disharmony with national laws and regulations of the Islamic Republic of Iran.

"It is ... the understanding of the Islamic Republic of Iran that:

"...

"5) Islets situated in enclosed and semi-enclosed seas which potentially can sustain human habitation or economic life of their own but, due to climatic conditions, resource restriction or other limitations, have not yet been put to development, fall within the provisions of paragraph 2 of article 121 concerning 'Régime of islands', and have, therefore, full effect in boundary delimitation of various maritime zones of the interested coastal States.

"..."

(b) Yemen:

"...

"3. The Yemen Arab Republic confirms its national sovereignty over all the islands in the Red Sea and the Indian Ocean which have been its dependencies since the period when the Yemen and the Arab countries were under Turkish administration.

"..."

Notes

1/ Official Records of the General Assembly, Eleventh Session, Supplement No. 9 (A/3159) pp. 16, 17 and 41.

2/ Ibid., Twenty-ninth Session, Supplement No. 21 (A/8421), Introduction, para. 39.

3/ Ibid., para. 47.

4/ Ibid., sect. III, para. 100.

5/ Ibid., para. 105.

6/ Ibid., para. 108.

7/ Ibid., document A/AC.138/53.

8/ See Convention on the Territorial Sea and the Contiguous Zone (United Nations, Treaty Series, vol. 516, No. 7477), article 10.

9/ See Convention on the Territorial Sea and the Contiguous Zone (United Nations, Treaty Series, vol. 516, No. 7477), article 11.

10/ Article 90 is a very considerable expansion of the concept contained in article 25 of the U.S. draft convention (A/8021, annex V); inter alia, it is designed to facilitate a solution to the problem of very small Non-Self-Governing Territories.

11/ Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21 (A/8421), sect. III, para. 101.

12/ Ibid., document A/AC.138/58.

13/ Document A/AC.138/66 and Corr.2.

14/ Document A/AC.138/67.

15/ Document A/AC.138/69.

16/ Document A/AC.138/72 and Corr.1.

17/ Document A/AC.138/74 and Corr.1.

18/ Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 (A/8721), sect. I, para. 23.

19/ Ibid., sect. III, para. 171.

20/ Ibid., paras. 185-188.

21/ Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 21 (A/9021), vol. I, annex II, paras. 85-90.

22/ Ibid., para. 71.

23/ Ibid., vol. II, annex VI, text 2.

24/ Ibid., vol. III, annex II, appendix V, text 9.

25/ Ibid., text 13.

26/ Ibid., text 17.

27/ See Convention on the Territorial Sea and the Contiguous Zone (United Nations, Treaty Series, vol. 516, No. 7477), article 10.

28/ See Convention on the Territorial Sea and the Contiguous Zone (United Nations, Treaty Series, vol. 516, No. 7477), article 11.

29/ Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 21 (A/9021), vol. III, annex II, appendix V, text 18.

30/ Ibid., text 20.

31/ Ibid., text 23.

32/ Ibid., text 27.

33/ Ibid., text 29.

34/ Ibid., text 32.

35/ Ibid., text 43.

36/ Ibid., vol. IV, annex II, appendix VI, subheading 6.6.5.

37/ Ibid., vol. VI, heading 19.

38/ Official Records of the Third United Nations Conference on the Law of the Sea, vol. III, p. 59 (United Nations publication, Sales No. E.75.V.5.), document A/CONF.62/29.

39/ Ibid., vol. I (United Nations publication, Sales No. E.75.V.3), second session, plenary meetings, 23rd meeting, para. 4.

40/ Ibid., 25th meeting, paras. 65, 66 and 69.

41/ Ibid., 26th meeting, para. 82.

42/ Ibid., 27th meeting, para. 4.

43/ Ibid., 28th meeting, para. 70.

44/ Ibid., 31st meeting, para. 60.

45/ Ibid., 32nd meeting, para. 13.

46/ Ibid., 33rd meeting, para. 39.

47/ Ibid., 34th meeting, para. 10.

48/ Ibid., paras. 25 and 27.

49/ Ibid., para. 31.

50/ Ibid., 37th meeting, para. 11.

51/ Ibid., para. 18.

52/ Ibid., 38th meeting, para. 17.

53/ Ibid., para. 52.

54/ Ibid., 39th meeting, para. 19.

55/ Ibid., paras. 29-32 and 38.

56/ Ibid., 40th meeting, para. 40.

57/ Ibid., 41st meeting, para. 22.

58/ Ibid., 46th meeting, para. 25.

59/ Ibid., vol. III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/33.

60/ Ibid., document A/CONF.62/L.6.

61/ Ibid., document A/CONF.62/C.2/L.2.

62/ Ibid., document A/CONF.62/C.2/L.18.

63/ Ibid., document A/CONF.62/C.2/L.22.

64/ Ibid., document A/CONF.62/C.2/L.25.

65/ Ibid., document A/CONF.62/C.2/L.32.

66/ Ibid., document A/CONF.62/C.2/L.50.

67/ Ibid., vol.II (United Nations publication, Sales No. E.75.V.4), summary records of meetings, Second Committee, 39th meeting, paras. 75-80.

68/ Ibid., vol. III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/C.2/L.30.

69/ Ibid., vol.II (United Nations publication, Sales No. E.75.V.4), summary records of meetings, Second Committee, 38th meeting, paras. 69-72.

70/ Ibid., 24th meeting, para. 38.

71/ Ibid., 39th meeting, paras. 23-26.

72/ Ibid., 24th meeting, paras. 46 and 47.

73/ Ibid., 39th meeting, paras. 39-41.

74/ Ibid., vol. III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/C.2/L.53.

75/ Ibid., vol. II (United Nations publication, Sales No. E.75.V.4), summary records of meetings, Second Committee, 39th meeting, paras. 29-36.

76/ Ibid., vol. III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/C.2/L.55.

77/ Ibid., vol. II (United Nations publication, Sales No. E.75.V.4), summary records of meetings, Second Committee, 39th meeting, para. 63.

78/ Ibid., vol. III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/C.2/L.58.

79/ Ibid., vol. II (United Nations publication, Sales No. E.75.V.4), summary records of meetings, Second Committee, 39th meeting, paras. 64-71.

80/ Ibid., 40th meeting, paras. 4 and 5.

81/ Ibid., paras. 10-12.

82/ Ibid., vol. III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/C.2/L.62/Rev.1.

83/ Ibid., vol. II (United Nations publication, Sales No. E.75.V.4), summary records of meetings, Second Committee, 40th meeting, paras. 26-29.

84/ Ibid., para. 232.

85/ Ibid., vol. III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/C.2/L.75.

86/ Ibid., vol. II (United Nations publication, Sales No. E.75.V.4), summary records of meetings, Second Committee, 21st meeting, paras. 1-2, 4-5 and 10.

87/ Ibid., 22nd meeting, para. 51.

88/ Ibid., para. 88.

89/ Ibid., 24th meeting, para. 27.

90/ Ibid., para. 37.

91/ Ibid., para. 83.

92/ Ibid., para. 97.

93/ Ibid., 25th meeting, para. 15.

94/ Ibid., 26th meeting, para. 21.

95/ Ibid., 39th meeting, paras. 1-5.

96/ Ibid., paras. 15-18, 20 and 21.

97/ Ibid., para. 37.

98/ Ibid., paras. 42-47.

99/ Ibid., paras. 48-51.

100/ Ibid., paras. 53-58.

101/ Ibid., paras. 59 and 60.

102/ Ibid., para. 62.

103/ Ibid., paras. 72 and 73.

104/ Ibid., 40th meeting, paras. 2 and 3.

105/ Ibid., paras. 6-9.

106/ Ibid., paras. 13-15.

107/ Ibid., paras. 17 and 18.

108/ Ibid., para. 21.

109/ Ibid., paras. 22-25.

110/ Ibid., paras. 34-41.

111/ Ibid., paras. 42-45.

112/ Ibid., paras. 46 and 47.

113/ Ibid., paras. 48 and 49.

114/ Ibid., para. 50.

115/ Ibid., 45th meeting, paras. 6 and 8.

116/ Ibid., 40th meeting, paras. 53-57.

117/ Ibid., 2nd-7th meetings.

118/ Ibid., 16th-21st meetings.

119/ Ibid., 36th and 37th meetings.

120/ Ibid., vol. III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/L.8/Rev.1, annex II, para. 7.

121/ Ibid., paras. 13-16.

122/ See Official Records of the Third United Nations Conference on the Law of the Sea, vol. III (United Nations publication, Sales No. E.75.V.5.), document A/CONF.62/L.8/Rev.1, annex II, para. 16 and appendix 1.

123/ Official Records of the Third United Nations Conference on the Law of the Sea, vol. III (United Nations publication, Sales No. E.75.V.5.), document A/CONF.62/L.8/Rev.1, introduction.

124/ Ibid., document A/CONF.62/C.2/L.86.

125/ Ibid., vol. IV (United Nations publication, Sales No. E.75.V.10), summary records of meetings, Second Committee, 47th meeting, para. 8.

126/ Ibid., plenary meetings, 55th meeting, para. 92.

127/ Ibid., document A/CONF.62/WP.8/part II.

128/ Ibid., document A/CONF.62/WP.8, Note by the President of the Conference.

129/ Ibid., vol. V (United Nations publication, Sales No. E.76.V.8), summary records of meetings, plenary meetings, 57th meeting, paras. 17-29.

130/ Ibid., Second Committee, 49th meeting, paras. 1 and 2.

131/ Ibid., document A/CONF.62/WP.8/Rev.1/part II.

132/ Ibid., document A/CONF.62/WP.8/Rev.1, Note by the President of the Conference.

133/ Ibid., vol. VI (United Nations publication, Sales No. E.77.V.2), document A/CONF.62/L.12/Rev.1, paras. 1-3.

134/ Ibid., document A/CONF.62/L.17.

135/ Ibid., vol. VIII (United Nations publication, Sales No. E.78.V.4), document A/CONF.62/WP.10.

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138/ Ibid., document A/CONF.62/RCNG/1, report to the Plenary by Ambassador Aguilar (Venezuela), Chairman of the Second Committee, paras. 11 and 12.

139/ Ibid., vol. IX (United Nations publication, Sales No. E.79.V.3), summary records of meetings, plenary meetings, 102nd meeting, para. 12.

140/ Ibid., 103rd meeting, para. 39.

141/ Ibid., para. 44.

142/ Ibid., para. 49.

143/ Ibid., para. 84.

144/ Ibid., 104th meeting, para. 62.

145/ Ibid., para. 65.

146/ Ibid., para. 75.

147/ Ibid., 105th meeting, para. 34.

148/ Ibid., para. 38.

149/ Ibid., para. 43.

150/ Ibid., paras. 59 and 60.

151/ Ibid., 106th meeting, para. 154.

152/ Ibid., vol. X (United Nations publication, Sales No. E.79.V.4), document A/CONF.62/RCNG/2, report to the Plenary by Ambassador Andrés Aguilar (Venezuela), Chairman of the Second Committee, paras. 7 and 8.

153/ Ibid., document A/CONF.62/69, paras. 2 and 5.

154/ Ibid., vol. XII (United Nations publication, Sales No. E.80.V.12), document A/CONF.62/91.

155/ Ibid., document A/CONF.62/L.42.

156/ Ibid., vol. XIII (United Nations publication, Sales No. E.81.V.5), summary records of meetings, plenary meetings, 126th meeting, para. 51.

157/ Ibid., 127th meeting, para. 26.

158/ Ibid., para. 37.

159/ Ibid., para. 72.

160/ Ibid., 128th meeting, para. 21.

161/ Ibid., para. 90.

162/ Ibid., para. 228.

163/ Ibid., document A/CONF.62/L.51, sect. IV, para. 16.

164/ Ibid., vol. XIV (United Nations publication, Sales No. E.82.V.2), summary records of meetings, plenary meetings, 130th meeting, paras. 2 and 10.

165/ Ibid., 135th meeting, para. 18.

166/ Ibid., 137th meeting, para. 4.

167/ Ibid., para. 76.

168/ Ibid., para. 86.

169/ Ibid., 139th meeting, para. 2.

170/ Ibid., para. 19.

171/ Ibid., para. 81.

172/ Ibid., para. 106.

173/ Ibid., 140th meeting, paras. 28 and 29.

174/ Ibid., para. 55.

175/ Ibid., vol. XV (United Nations publication, Sales No. E.83.V.4), document A/CONF.62/L.69, para. 8.

176/ Ibid., summary records of meetings, plenary meetings, 154th meeting, para. 60.

177/ Ibid., document A/CONF.62/114, paras. 1 and 2.

178/ Ibid., document A/CONF.62/116.

179 Ibid., vol. XVI (United Nations publication, Sales No. E.84.V.2), document A/CONF.62/L.87, para. 13.

180/ Ibid., summary records of meetings, plenary meetings, 158th meeting, paras. 14 and 15.

181/ Ibid., 159th meeting, para. 14.

182/ Ibid., 160th meeting, para. 11.

183/ Ibid., 162nd meeting, para. 34.

184/ Ibid., 164th meeting, para. 45.

185/ Ibid., 165th meeting, para. 110.

186/ Ibid., para. 134.

187/ Ibid., 166th meeting, para. 13.

188/ Ibid., document A/CONF.62/L.93.

189/ Ibid., document A/CONF.62/L.95.

190/ Ibid., document A/CONF.62/L.118.

191/ Ibid., document A/CONF.62/L.126.

192/ Ibid., summary records of meetings, plenary meetings, 168th meeting, para. 41.

193/ Ibid., para. 45.

194/ Ibid., para. 47.

195/ Ibid., para. 57.

196/ Ibid., 169th meeting, para. 43.

197/ Ibid., paras. 52 and 53.

198/ Ibid., 170th meeting, paras. 6 and 8.

199/ Ibid., para. 27.

200/ Ibid., para. 49.

201/ Ibid., para. 54.

202/ Ibid., para. 56.

203/ Ibid., para. 68.

204/ Ibid., 171st meeting, para. 4.

205/ Ibid., para. 8.

206/ Ibid., para. 31.

207/ Ibid., para. 38.

208/ Ibid., para. 99.

209/ Ibid., 172nd meeting, para. 29.

210/ Ibid., para. 38.

211/ Ibid., para. 46.

212/ Ibid., paras. 54 and 55.

213/ Ibid., para. 65.

214/ Ibid., 173rd meeting, para. 17.

215/ Ibid., para. 27.

216/ Ibid., para. 61.

217/ Ibid., para. 65.

218/ Ibid., document A/CONF.62/L.135.

219/ Ibid., document A/CONF.62/WS/18.

220/ Ibid., document A/CONF.62/WS/20.

221/ Ibid., document A/CONF.62/WS/21.

222/ Ibid., documents A/CONF.62/L.132 and Add.1.

223/ Ibid., document A/CONF.62/C.2/L.101.

224/ Ibid., summary records of meetings, plenary meetings, 174th meeting.

225/ Ibid., 182nd meeting.

226/ Ibid., para. 78.

227/ Ibid., Second Committee, 59th meeting.

228/ Ibid., document A/CONF.62/C.2/L.101.

229/ Ibid., summary records of meetings, plenary meetings, 182nd meeting, para. 179.

230/ Ibid., vol. XVII (United Nations publication, Sales No. E.84.V.3), summary records of meetings, plenary meetings, 184th meeting, para. 1.

231/ Ibid., document A/CONF.62/122.

232/ Ibid., summary records of meetings, plenary meetings, 189th meeting, para. 70.

233/ Ibid., para. 88.

234/ Ibid., paras. 165-167.

235/ Ibid., para. 251.

236/ Ibid., 190th meeting, para. 51.

237/ Ibid., 191st meeting, para. 73.

238/ Ibid., para. 122.

239/ Ibid., para. 139.

240/ "Article 310. Declarations and statements. Article 309 does not preclude a State, when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State."

241/ See Status of the United Nations Convention on the Law of the Sea (United Nations publication, Sales No. E.85.V.5.)

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