# and he child is it developed walas Comer perception ferme of L.o.S. Conferen-

because they have the tenchological know-hows and they could only benefit from the failure of the law of the sea conference. It is the hope on the part of some of the interest groups that during the forthcoming conference some new approach will emerge so that there could be a realistic a just and equitable law, new law of the sea. And if there could be a good trend for changing the present trend of the SNT, then naturally it is a hopeful sign that that sort of trend/to, as our colleague from Yugoslavia has said, that Sri Lanka, where the heads of the non-aligned .. and head of states .. their meeting and it is their hope that their endorsement could be obtained.

[Lunch]

4-11-76 p.m.

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NSG

It's slightly after 1:30 and I've been asked to chair this afternoon's session. It's an honor and privilege to be here with you. I understand two of our missing aircraft are supposed to be coming in this afternoon so that we may have the pleasure of greeting them as well.

My sense of what is appropriate as handed down to me from on high which means from my right and your left is that we begin to focus quite specifically on the SNT and the criticisms comments, evaluations that appear in the volume authored co-authoried by Mme Borgese and Ambassador Pardo. First of all to make sure I have my marching papers proper 19 understood, is that correct? The question is then where do start? Do we start with Part 1? Section I? And do you wish to proceed seriatim? I think we wught to have suggestions also from the floor but

I turn to Mrs. Borgese first as I usually take my orders from

EMB I think really it depends on what the seminar, what the members would like to do. We certainly would be grateful to have your comments especially on our comments and suggestions in this text and since Engo will be with us tomorrow, it certainly will be useful to pospone anything to do with Part I of the SNT to such time as he will be available, but since in our order of things, the work

> we might as well proceed seriatim. I don't know whether all of you have had a chance to read the material. The material basically simply provides a summing up of the SNT ordered according to the order that we are proposing but what is the relevant part and perhaps it deserves some discussion are the sections entitled in the text here as comments and suggestions and I think we'd like to leave it at that and that you pick up whatever item you would be moved to comment on and I think that we should comment on it from two points of view, one, does it or does it not advance the NIEO, and second, what is its political feasibility. We know that many articles are in the process of being amended in various working groups and so on at the U.N. at the LoS conference and at intersessional meetings. What is your evaluation of the chances of such improvements as are suggested here?

of the 2nd committee and of the 3rd committee comes first

Elisabeth, are you saying that we should address ourselves to these questions not with regard with Section I

SG

- EMB Yes, Section I, starting on page 21. There is always one section which merely summarizes thes SNT for those who don't have it present. Incidentally we have copies for reference available here, of course. I think that the part that lends itself better to a discussion are the sections entitled comments and suggestions.
- NSG In other words on page 21 on the question of baselines the first paragraphs are a summary of what is in the SNT, that

is what is significant and that is then followed by the commentary and suggestions that have followed-the implications and we should concentrate on those. Is that satisfactory to everybody? You can see on page 23, when one moves to historic bays and historic waters, there is a summary and comments and suggestions and that kind of breakdown, that dual character of the document is continued throughout most of it so that we can continue, we can start on page 21 and then just go through that way. I should perhaps mention it is not merely a summary of the SNT but it also puts the SNT in perspective, that is it makes a comparison between existing international law and points out where the innovations of the SNT are.

And it particularly makes reference as I recall in reading it to the 1958 LoS materials and shows what the contrasts are. In this connection I might mention that I ran a seminar at the University of Chicago last year for students of law, geography, politics, using the SNT and attempting to look at it analytically very much in the way that Ambassador Pardo and Mrs. Borgese have done and I must say that it would have been a much more successful enterprise if we had had their analysis as beautifully laid out as it is here and I propose to try to do that again so that the eristic academic virtues of this document are really very great indeed as well as its practical implications. May we then seek comments from the floor? Shall we start with the baseline issue, is that satisfactory, and then run through the various issues. It may be that in this connection that there will be no controversy and we'll be able to move ahead more quickly, or it may be that a particular point will xxxxx require a good deal of extended discussion.

Again on the baseline issue, if you look at comments and suggestions, the question of ambiguity here which is, to which Ambaasador Pardo referred this morning, is beautifully and sadly, I think, illustrated. The definition, deeply indented, immediate vicinity, and so forth, are all the kinds

EMB

NSG

of terminology that might make international lawyers happy but which can only lead to difficulty in the actual pursuit of policy. Arvid would you care to help us on this, is there any guidance that you can give us in this connection on the baselines issue which is a very important one I know

Raxda

To my mind, it is no use defining the limits of the exclusive Pardo economic zone or of the territorial sea if one doesn't set strict criteria for the drawing of baselines because the territorial sea is measured not from the coast but from baselines drawn by the coastal state and if there are no strict criteria for drawing baselines, there are no strict criteria, there is no definition of the extension of coastal state jurisdiction. In the 1958 convention and in the SNT, according to these very important documents, baselines need not connect points on the coast, they can connect defined by geographical coordinates as in fact the Maldive/and Tonga have done. Baselines can be drawn straight bacclines can be drawn for more or less indefinite length. Libya has defined, has hoined baselines between one side of the Gulf of Sifta? and the other side, baselines which are about 400 miles long, and this has been done by two or three other states. Under these circumstances, and should the practice spread as it undoubtedly it will for all states that have the capacity to do so, we would have baselines which enclose, well, they already enclose hundreds and thousands of miles of formerly high seas we should have baselines that enclose perhaps a million miles or more of high seas and this in turn of course could lead to certain consequences with regard to the limits of the territorial sea or the limits of the exclusive economic zone. Who profits by long baselines? Who profits by baselines which join pair points which are not on the coast? The only Nhe preph. prem Pour beselve. nationsthat can profit by this flexibility in the criteria for drawing straight baselines are states with very long coastline. A state with a coastline of say 300 or 400 miles and no particular islands within 500 miles can profit little. States with very long coastlines and with islands not too far away from the coast can profit enormously. Here it is suggested that the criteria for baselines in the SNT could be made much

stricter. The suggestion is first that it be stated explicitly that baselines should join points on land, not appropriate points but points on land. And hopefully this would not be a matter for excessive political contention and secondly it was suggested whatever the limits of the territorial sea are, say it is 12 miles, straight baselines should not exceed 3 or 4 times the breadth of the territorial sea. This would bring the maximum length of straight baselines to say 48 miles. Now in the Norwegian fisheries case, the international court of justice recognized a maximum length of baselines of 49 miles, I think it was, 49 and a quarter miles in a Norwegian fisheries case. In short it would be approximately ratifying internatimally recognizing and making it of more general content, the content of a decision in the Norwegian fisheries case. Thirdly it is suggested that states not nearly archipelagic states

but all states not merely indicate straight baselines drawn by them on maps or charts but deposit such maps or charts with the Secretary General of the international seabed authority or whatever it is and this would make general a rule which now is proposed only for archipelagic states.

Fourthly, it would I would suggest challenges be permitted with regard to baselines which appear not to be drawn in conformity with the provisions of the convention. These challenges to take place within the framework of the dispute settlement machinery. As presently drafted, the dispute settlement machinery would appear to exclude such challenges. Finally I would suggest that instead of 80 to 125 miles as the maximum length of straight baselines for archipelagic states, such maximum length be considerably reduced and that a maximum length for straight baselines be introduced also for states which are not archipelagic states.

NSG I should think we are all very grateful to you to have laid these out for us. Essentially, those points are summarized in the last paragraph of the comments and suggestions section above the middle of page 23. Are there any reactions to these proposals and comments?

- SH May I ask a very naive question? Is there anything in the text to prevent two adjacent states on a gulf from making a joint declaration of the baselines defined in such a way as if they were one state?
- AP No.

AP

Mrs. Danelius Isn't that making it longer? Twice as long?

NSG Is there a precedent for that in international legal practice?

AP I can't think of one but I would not exclude the possibility of precedents being created on the basis of the SNT.

NSG Other questions or comments?

What are the real political objections against making these EMB things more precise? I mean the economic implications are clear, that is that this ambiguity in national claims will have the effect that a part of manganese nodules will fall under national jurisdiction and whole system built for international management of nodules, the whole ambition of regulating prices and so on and so forth for the benefit of the developing nation is going to be undermined. I mean these are the economic cimplications of these ambiguities but that of course is not discussed. What are such as things are today, the political objections, for instance, these paragraphs which are obviously deficient. I mean are they deficient because the working group on baselines in Geneva just didn't do a good job or are they deficient by political design and what can we do about it.

What little I know, I wasn't a party to the negotiations in any way, but what little I know, it would appear that in order to

simplify matters, the decision was taken to reproduce the baseline provisions of the 1958 Geneva convention and then since Bangladesh was insisting that something had to be done about her deltas, her delta, the decision was taken for the special provision for flexibility of baselines with regard to Delta states and since the archipelagic states of course insist on their archipelagic principles, further provisions were added with regard to archipelagic states and since generally speaking states didn't wish to, there was no particular enthusiasm shall we say for states to limit the criteria for drawing straight baselines, the general result was this. There was no pressure on the other side to make them to have stricter.

- NSG When you have loose criteria like this, loos standards, the pressure I gather you're saying would be in the direction of an individual country to reach out as far as it can. I mean extend territoriality as far as possible into the sea and that is something that I gather from the rest of the document a principal one one might look at with questions.
- LaQue Since Mrs. Borgese has susggested that the exploitation of mangangese nodules might become extensive within the economic zones based on whatever baselines might be decided upon, I have had an impressions, and I'd like Dr. Arrhenius to correct me if I'm wrong, that the probablity that of any extensive mining of manganes nodules within economic zones is small and probably in my view should not be a major factor in the debate on baselines. Do you want to straighten me out if necessary?
- Arrhenius I couldn't more than agree with you entirely on that. Of course that is the present situation. The original suggestion, the first suggestion I know of for exploitation of manganese nodules was actually on the continental shelf of Siberia. That project died out in 1978. The present project is certainly far away from any coastline. This much the queries of the metals could be made profitable.

There are lots of manganese nodules across the coast but nobody wants manganese right now. I don't know if that picture could change in the future or not.

- While I would agree that it is not directly relevant to the mining of manganese nodules, neverthe less archipelagic baselines might have some influence on this. For instance, if French Oceania which Polynesia, French Polynesia, takes advantage of the archipelagic baseline provision, this could enclose certain nodule deposits. If, since at the present time, there is no limit to the baslines which may be drawn by a coastal state, we could have coastal states drawing baselines far out into the oceans for instance, Hawaii could be linked to the coast of the United States by a baseline. That would be a baseline over 2000 miles long. But if a baseline can be drawn which is 400 miles long, and I think the longest baseline now at present is around 450 miles long, straight baseline. Why not 500, and if 500 why not 600 and so on and so forth, and we could have the Gallapogos islands linked to the coast of Ecuador, Hawaii to the United States and in this way, it would include manganese nodule deposits which are commercially exploitable.
- EMB May I just add to that that in Okinawa -- I am just going through the whole transcript doing the proceedings -- we had representatives of the University of Hawaii and they told us that indeed Hawaii is making all preparations with the Department of the Interior in the United States to claim exploitable areas for manganese which they intend to exploit under national jurisdiction. So this is not a fanciful story.

Haber ... baseline linking Hawaii to the U.S?

AP

NSG At least there's nothing to prevent it on the basis of precedent. I think that's the primary part of Ambassador Pardo's argument and lies very much at the crux of this whole matter.

LaQue Let me see if I understand things now. If baselines to the extremes of connecting Hawaii to the United States, Certainly it would encompass some valuable nodule deposits. If however they should be restricted to what apparently you are suggesting, something on the order of under 100 miles, then the impact of that on manganese nodules mining and vice versa is going to be very limited.

AP That is correct.

NSG That'sounds very reasonable.

- EmB But therefore in view of trying to make these articles conform to the NIEO, it would be advisable to clarify these ...
- LaQue. I'm not against clarification, I merely wanted to get in perspective the extent to which manganese nodules will get into the debate on how long the baselines should be.
- ? Sahovic I understnad the logic of the proposal but on the other side (French accent) I am thinking about the logic of the proposal included in the SNT. There are two different approaches involving this contradiction. That is the problem. How to relate these two approaches. I understand what would be the positive result of the adoption of your proposal but on the other side I know that different interests are involved and this is a question which we will have to touch discussing on the majority of your proposals. So it's a basic question, a fundamental question.

AP It is a fundamental question.

This is the reason why it's very difficult for me to say to you, okay, it's very good, this what you are saying, but , what you are suggesting, but it's difficult for me to say it, because I have in mind that what is behind the text of the SNT and we have seen and you showed to us here the SNT is a kind of development from your point of view negative direction from, if I understood well, from the LoS convention of 58.

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Wel amendment to a preparer? Perkys Barelin

AP

It makes the provisions, the criteria, for drawing straight baselines, even more flexible than they were in 1958. But here we have to face the fundamental problem, what is the use of the whole of Part I of the text if there is no real international jurisdiction?

Now the baseline provisions as I understand it, were not discussed with the same amount of seriousness and with the same amount of depth as the provisions with regard to the economic zone and the provisions with regard to passage through straights. They were discussed, and/the number of states participating in the discussion was relatively limited, it was considered essentially a technical matter, essentially let us adopt the 1958 provisions with the small modifications required to accommodate Bangladesh, to accommodate the archipelagic states, to accommodate a few other states, and that is that. Fine, but what my suggestions is that this is fundamental and equally important to the provision with regard to the economic zone and to the passage through straits, and if the provsions are not corrected, the entire part I of the text and the entire discussion with regard to the international seabed authority is at best marginal.

EMB I really wanted to say pretty much the same thing, that to my mind the fact that these articles have not been discussed in depth gives reason for hope. That means that the issue can be raised and that these articles perhaps can be improved without ar≠ousing too much opposition. I mean these defects perhaps really have gone in rather by negligence than by design and if somebody raises them in the 77 with these points you have in mind there's a good chance that a concrete improvement in the text can be made.

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NSG May I ask if there is anything approximating a general consensus at also a very general level. Would there be a consensus for example of this group composed of people not speaking officially in any way, as was underscored earlier, that in the negotiating Text a more precise definition of standards for the drawing or delimitation of straight baselines if it is required without necessarily taking up each of the points? I would assume the answer is yes but it may be that there might be some reservations even about that?

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Sahovic May I say the basic question is that touched by Ambassador Pardo and Mrs. Borgese which is based on their appraisal of the seriousness of the debate in the first committee. What is important is to explain what the consequences of this kind of debate and you are doing this in the text. It would be for me more interesting to try to explain to make more clear for the participants of the conference that they have to reconsider the problem from the point of view of general interest. You are insisting. And I'm saying so. Why? Because I have in mind, I remember of the past and the 1st debate in the Genral Assembly. The intention from the very beginning was not to give the questions generally speaking and those questions tee to .... an idea if you remember that the International Law It was Commission start again to revise the LoS Convention from 58 and then, all of us we have been in agreement that it is not a question of ....., it is a question of political and economic analyses and study. But in fact what we had, we had in fact a kind of small adjustments done on the basis of the convention of 58. This means that the countries have been more inclined to discuss it from the legalistic and more or less technical, narrow sense. So for me it's a preliminary question basic question. In that moment it's basically more important to clarify this question .. than to take a position to say yes, all right you have to concentrate, to limit to give a solution.

NSG I wonder if it's necessary for us to assume some kind of consensus as we go along. The purpose of this is to clarify, to

define the issue in terms that are readily comprehensibe and to suggest some possible ways of approaching the issue without necessarily requiring the group to act in any way, and I perhaps misle ad you by asking about consensus.

I must say in my own experience, which is very limited, as of Caracas, I also had the view that the baseline issue was a rather technical one. It could be solved by technical means and was not as fundamental as Ambassador Pardo suggested and I had to turn all the way around and agree with him that the implications of the loose wording, the flexibility that is implicit in the NT can only lead to enormous difficulties and to the partitioning of ocean space in a way that very likely will not be in the best interests of most of the countries in the long run. That's of course a personal view. Is there any other discussion on the baseline issue? It's an important one, so we spend more time on it perhaps than we will on others.

Haber In the course of talking about the baseline issue, did you also discuss how you would essentially show the baseline on maps, if you will, and how you would in fact keep track of this as time goes on?

AP There are provisions in the SNT that baselines must be clearly marked on charts drafted by the coastal state and there are also special provisions with regard to archipelagic baselines which provide for the coastal states to deposit these charts with the secretary general of the United Nations. Now here the only thing which I suggest in this respect that if the change would be instead of Secretary General of the United Nations, it should be the Secretary General of the Seabed Authority because that is more particular, and that the provision for depositing these charts should be extended not merely to archipelagic baselines but also to baselines drawn by other coastal states. That is the only thing with regard

- Haber You haven't talked for example about drawing these on maps that might be taken by satellite pictures.
- AP I haven't gone into this at all because I thought that already the suggestions which I made were radical enough and in the atmosphere of the law of the sea Conference, I thought it was best to avoid complications.
- Haber Then one final question. When we met some time ago, we concentrated as I recall on the commercial zone, the economic zone, and also on the zone close to shore. Now what was the reason for moving from the economic zone to a baseline? What is the reason why you wouldn't use the 200 mile or some some other figure?
- AP This is a distinct issue and I think we'll come to it when we discuss the economic zone. This is not directly connected with baselines.

Haber The baseline then as you see it is essentially ...

- Pardo The baseline is the line drawn by the boastal state from which the breadth of its national jurisdictional areas is measured. In short, the traditional rule, going back 40 years in the law of the sea, was that the coast was the baseline. Since the Anglo-Norwegion fishery case in 1949, it has become more and more prevalent for coastal states to draw straight baselines, that is to say, the breadth of their national jurisdiction is no longer measured from the coast, but it's measured from lines, straight lines drawn by the coastal state which in theory should connect points on land but which, I'm afraid, unless the text is changed, will connect points out at sea.
- NSG Shall we move on to the next item, continuing with the text?
- Palma Do you mind to read again for us what would be the drafting of the sort of general conclusions we have reached?

## Nsg Would it be this paragraph basically?

- Pardo I thought the general feeling probably is that there should be no general conclusion, that this should just be considered as a kind of clarification.
- We are not seeking a general conclusion here but a clarification NSG of the issue. The suggestions are summarized quite well in the middle of page 23 in a paragraph which I assume was of Ambassador Pardo's authorship. I recognize his style but it might be enough simply to register in our minds that these are problems relating to the baseline issue of key significance and actually Mr. Haber's questions permit us to repeat something very important, that the definition of the territorial sea, the definition of the patrimonial sea or economic zone, indeed the whole issue of the extension of territorial sovereignty from land to sea stems upon a proper solution of the baseline definition and measurement problem. Therefore its very great significance, and the implications of not defining the criteria for baseline measurement are of a staggering sort that Ambassador Pardo referred to and Mr. LaQue then picked up himself whereby the United States, for example could draw a baseline connecting the Hawaiian islands with the southernmost tip of California or the northwesternmost tip of the state of Washington and thereby encompassing perhaps 24.3 percent of the Pacific Ocean within waters under the control someway of the United States.
- AP Mrs. Emich and then I just wanted to add that of course the waters within baselines are not territorial sea. They are internal waters, there is no innocent passage in internal waters.
- Emich I just wanted to agree with you. I think we should not try and formulate a sort of consensus here because it might be very easy with one point. We might get as we go along, it might get more and more difficult and we might spend some time trying to formulate a sort of ... I think we should better use time for

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really discussing these issues. If I might just add I share the views expressed that the provisions on baselines probably slipped in as it was regarded as a rather technical matter and it was probably hest not to ... This is why by the way I think the conference, the way it is organized is not the best organ to formulate technical provisions. I think that we should leave that to the real experts although sometimes we consider ourselves experts in a number of fields. So I really think it slipped in but I agree that it is the basic question and that as we measure from there our territorial sea and economic zone. I don't think if we clarify the matter at the coming session whether we really might come to one provision which would be within what is said in that paper. I rather think that in some countries when you tell them that it might increase the area which could come under national jurisdiction of the coastal state would be rather inclined to follow this approach as we have now. I'm afraid I'm rather pessimistic on that. It probably might also depend on who is going to profit by that and upon that the decision might be taken whther we agree to that or whether we change it.

- NSG I think we probably share your fears unless the participants are of the enlightened sort to which Mr. Palma I think it was referred to this morning and I don't know that we can assume that this is necessarily the case.
- Palma I think that it would be necessary to mention this point. Of course, taking into account the importance as Ambassador has said, what is behind the coastal lines, baselines, are internal waters. So, if they are expanded to limits that 20 years ago seemed just impossible, it means that for either there is a sort of relaxation of the mood in the lst committee in order to permit such a thing to happen in the text or to reflect in a text, or either perhaps many different trends believe at this stage that they are going to gain a significant advantage. Whatever the cost would be for we facing this text now, it is

clear that these are the situations that are likely to produce a great deal of confusion that is not going to solve any particular problem later. So if this group reach the conslusion, arrive at the conclusion, I don't want to say agreement that a great deal of thought is necessary in this item, I think that is fairly good. Of course nothing clearly appears from the present situation. That is what I was trying to make in support of this orientation. Only in that respect because if the Text, the Negotiating Text, has already considered the KWM inclusion of these provisions that of course in the Norwegian case, it was almost, if I recall properly an international scandal. Now a few years later, we can believe that we can very easily dismiss this preoccupation and everyone can have the baselines they want. So such a big change makes me think that there is something which is not working really. We think this concern, I think that could be advance.

Hofstee I will also add some pessimism. I think that Mrs. Borgese said it would perhaps be possible to have a new look at th is whole matter at the coming session wfxtkm and as far as I know this is one of the issues in which at least some of the possibilities of some agreement seem to emerge during the Geneva session and I'm not sure whether there will be a general willingness to reconsider the matter all over again and then I would also ask what you propose is in fact apply or establish more restrictive rules than we now have in the Geneva Convention of 1958. And do you think that is really possible? Atxiewstxtmxtmaxeximextimesximitimesximitimes.

AP

At least to have the baselines joining points on land. Hopefully the conference can agree on this. If it can't agree on this the prospects for the conference are not good. Hopefully, at least joining points on land and hopefully, setting some sort of reasonable length for straight Baselines, at least this.

Sahovic It would be good to know what Engo thinks about this.

xEngm EMB Engo I think is very much in favor of that. Engo made a very strong statement in Okinawa for the necessity of drawing precise

limits to national jurisdiction because he knows that his whole work is in jeopardy this way. He said that quite frankly.

NSG

May I make a suggestion? I can see the clock from here very If Ambassador Engo is coming as I understand tomorrow, well. why don't we hold further discussion on this important issue, draw him into it, we can always return to any of these things, and I think we have a consensus that this is a remarkably important issue that bears further discussion and that's not a trivial conclusion in light of the possible danger of its not being adequately discussed, and the implications of the loose drawing of standards not understood. I think we do appreciate what some of the significant consequences might be here. May we then move to the/fuestion of bays and historic waters. It's pointed out there in several references in the NT, to these terms, the terms are ill-defined, that they were not referred to in the 1958 territorial sea convention for They are incidental, but they can, I think get in example. the way is what is being said and then there are some suggestions that the NT be amended in ways that are specified at the top of page 4.

AP

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Could I just add a few words? The question of historic bays and my memory doesn't serve me very well but I think also historic waters was mentioned and I think some delegation if I remember correctly wish to define these concepts more precisely but the consensus among delegations participating in that particular discussion was that this was too complicated and that this would be a matter for dissension and therefore the subject would be best avoided. The position I have put forward here is that the concept itself of historic bays and hsitoric waters is under contemporary circumstances an unnecessary complication in the law of the sea. It has no necessity to define this concept at all, that these concepts should be gradually phased out from the law of the sea through a process

of registration of claims anyone can present his, the Philipines for instance xxx that has a claim of historic waters can register her claims if anyone wishes to oppose this particular claim let them oppose it and the procedure for dispute settlemtne will settle the claim once and for all but that no new claims of historic bays and historic waters be admitted by the international community unless they have been registered. And that is all, that is all that has been proposed under the circumstances. No attempt is made to define what one should consider as historic waters because states have very definite opinions on this and let all this go to the dispute settlement machinery, but that at least we can agree on saying that if a claim is not registered within a reasonable time from the conclusion of the treaty, no further claims will be admitted by the international community. Give us an example, will you, of historic bays or historic waters. Can you think of any? I'm trying to think.

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.. the bay of von seca in which some Latin American states are concerned. There is considerable amount of discussion of this. There is the Peter Paul Bay near Vladivostok and so on. I think the best way to deal with the subject which is a nuisance in international law is to refer all these matters wf to a dispute settlement machinery. If there is anyone who wishes to oppose the claim to agree that only no new claims to historic waters be admitted to the international community unless they have been registered with the Secretary General of the U.N. or of the Seabed authority and gradually let these claims die out because in the context of the exclusive economic zone, and of the extension of national jurisdition of the seas, these claims really are largely irrelevant.

- NSG Any comment or question on this point? We are not seeking a consensus except one of understanding what the issue is.
- Harvey I have a question about gulfs, the gulf of Pohai, where the Chinese mainland, the Chinese are contending about what the South Koreans, the oil of the Pohai gulf, is that an historic

NSG

AP

- The thing is that you may assume 99 percent certain that all gulfs that can be remotely considered gulfs would be eensideredclosed by straight baselines. Now the whole thing is irrelevant in the context of historic waters. In cases like the Ceylonese pearl fisheries, this again is comprised, amply comprised within the exclusive economic zone. The question doesn't arise in this context any longer and it's much better in this minor matter to phase these whole concepts out from the law of the sea.
- Arhennius Would you be concerned with that if there were such a deadline on claims? Wouldn't there be a rash of people who wouldn't otherwise do it, thereby clogging up the whole machinery for progress.
- There might be a rash of registered claims, and if there is a AP rash of registered claims, there would be a rash of registered opposition to these claims and in these circumstances, the issues would draw out in time. They might last ten or twenty years but at the end of this period, by the end of this century, the question would be resolved. As the matters stand, by ignoring the issue, we have emergence of new claims to historic waters beyond the exclusive economic zone and this can be very very serious in the context of the whole Part I of the text. There will be nothing left.
- question of approaches and what it would be wiser to do. It;s Sahovic just a question of orientation. Maybe the orientation of the Geneva convention and this which is now suggested is better. Just to stay there where we are.
- Yes, you see what happened both in Geneva AP
- Sahovic May I add, while you are waiting for new claims, This is one of generally speaking obselete institutions, the institution of historic base and historic waters and this was maybe why the Geneva convention and although the sNT ine giving so little importance to this.

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Yes, in part. What, the background as I understand it, is that this whole question of historic bays and historic waters, its' general background, has been the domain of specialists in the 'law of the sea. All these claims originate through a state of fact which has been established over the centuries. New states, the international relations on dynamics, new states of fact are emerging. What is emerging for instance in the northwest Pacific is a state of fact in which certain countries, in effect four countries are pretty well exploitedg, exclusively exploiting the fishery resources of the northwest Pacific, and they have done so for a period of years. This could give over a period of time to the countries concerned a claim to historic waters for the purpose of fishing, and this would expand, would give rise to a new claim of historic waters, and similar situations are arising in other parts of the world. The best way to deal with this in areas beyond national jurisdiction, as far as I can to the best of my knowledge, is to gradually phase out the legal concept, gradually phase it out so that we have no more nonsense on this, and what remains beyond national jurisdiction will in *é*fect be internationally administered.

- NSG So that the intension is not to generate new claims but to provide an opportunity for cutting off new claims at the risk however of generateing in a public way some claims which have been implicit or dormant for a period of time.
- AP To give all reasonable claims which now exist the possiblity of adjudication and international recognition on the one hand and to prevent the emergence of new claims to historic waters beyond the exclusive economic zone existing.
- NSG May we move on then to some even more significant issues. We have reference here to the territorial sea and its definition and it was observed that seems to be a very substantial consensus among countries that such a sea, from whatever baseline measured be of a width of 12 nautical miles, and it's suggested

AP

that in the comments and suggestions section that we'd simply note this, we're all aware of it of course, and return to the issue in another context in a little bit. This does bear however on the next section which is section 4 contiguous zone at the bottom of page 24, and this is a somewhat more difficult issue in that the argument for the continuing existence of a contiguous zone I take it is countered to some extent by the fact that the breadth of the territorial sea itself has been quadrupled by consensus and that this is roughly the equivalent of what had been the contiguous zone as previously defined, there is now therefore an interest in doubling the width of the contiguous zone, the rationalization for this is that it will permit better control of certain kinds of activities in the waters offshore or the riparian state. Now the comments and suggestions of course make this clear. The concluding suggestion of the suggestions is that article 33 part 2 of the NT with regard to the contiguous zone be deleted. Ι hardly expect that this group is going to reach an immediate consensus about that prospoect. It is extraordinary. Nevertheless that it should be made if I may say so by so responsible an observer as Ambasador Pardo in collaboration with Mrs. Borgese suggest in turn that we should give it serious consideration. Would you wish to elaborate?

The only thing I would mention is that it is a needless complication the context of the proposals contained in the NT for the simple reason thatstates in effect exercise in the exclusive economic zone or will exercise in the exclusive economic zone according to the SNT most if not practically all the powers which they exercised previously in ;the contiguous zone so what is the use of having two concepts for the same area. The only difference if possibly, kww what is difference, well, essentially, I see very little difference really, very little greater coastas state control in the contiguous zone than in the exclusive economic zone in the SNT and I really don't see the reason for it. I think the reason is more psychological than legal or

AP

Gul your Jone i Simplyin political and it is a fear on the part of coastal states that they would be relinquinishing some right or some competence which they previously could lay claim to and now they might no longer lay claim to. But I think the spirit unreasonable

- Palma I completely agree with you. I think it's a question of the idea of a sort of buffer competence within what is the ownership and the other that is a intermediate zone for this sort of purpose but perhaps if I recall properly this question of the Canadian environmental oil pollution law or something like that really is related to the matter because they didn't claim a question of having a contiguous zone, it was onlyxexe a competence applied in respect to a particular issue of interest for the state. So regardless of the nature of the zone, the point was tackled with a governmenatal unique decision. I would certainly agree with you.
  - One of my students looking at this -- we had analyzed the text NSG -- a few months ago -- asked again the question, why, why contiguous zone, it seems to complicate matters and then said well, if there were a consensus among the majority of the interested state party to the agreement it would be much simpler for them to expand the width of the territorial sea to 24 miles if that would allay their fears or provide the a more useful type of measure. I simply, I'm not advocating that position for reasons that should be obvious but it is an alternative, that is why have two zones if you han have one fulfil the functions concerned? I think perhaps it's enough simply to recognize that there are feelings about this to pursue, one possibility is to follow the principle of of akams rezor and that is to have a simpler solution to the question how many, namely one zone rather than two without necessarily debating the matter further. How do you all feel about that? Mr. Ambassador.

Hoveyda We have to keep inmind that this document of the conference M U P 8 is entitled Single Negotiating Text. We should not forget that it is a negotiating text and if some countries against logic are insisting in retaining the idea of the contiguous zone, it is because they don't know what would come up in the negotiations about territorial sea. That's the only reason so I think that we should keep it with the comments made in this paper just underlining these comments that if we can to an agreement on territorial sea then this should be dropped out because it's useless.

> Would that be satisfactory to the group? It's consistent with our procedural agreement. Now when we move of the next subject -- these are really very important topiss I realize time is slipping away and we can't get around them. We move to the exclusive economic zone. There's a masterpiece of understatement in the comments. All of you have seen at the top of page 26. Considerable extension of costal state\$/ functional jurisdiction which means for specialized purposes in effect in the marine environment may not be unreasenable. I won't ask about the consensus about that.

I prefer to leave this in general terms. IN other words it is in line with my general concept that there should be not sovereignty not ownership but ase and hence the coastal state functional jurisdiction in a wide area around this coast may be necessary and in fact inevitable but that this should be constrained by international norms and essentially by the obligation to pursue, by the obligation to exploit in a reasonable manner and which does not harm the interests of neighboring states or of the international community. That is why I think more in terms of jurisdiction and of functions and control rather than in terms of sovereignty. But this is of course a philosophical point of view.

AP

G

NSG

I think much of that is imbedded in some of the other parts of

the SNT

- Emich I would agree with what Professor Pardo just said and I'm also in agreement with the terms jurisdiction and the use by the coastal state, but I would still say that the terms exclusive economic zone would rather indicate a sovereignty and this is something where we have great difficulties to accept the term in the SNT. We think that the approach which were in a number of suggestions adopted that is the dotted line would have been better just talking about the zone but this is the minority approach which unfortunately has been not too much reflected in the SNT.
- AP Of course I use the term exclusive economic zone in the title and in shall we say an objective fashion. I didn't express my views in this context on the content of the jurisdiction of the coastal state within the xone. I just said that the exercise of jurisdiction is reasonable in a functional sense. But would you agree that the term exclusive economic zone would have a further notion than just the jurisdiction?

AP From your point of view yes.

- Skoglund If it's not sovereignty but use could, more than one country could use the same area ... just use
- AP Yes, here we come into the whole question. I think the matter is discussed further on in terms of the interest of landlocked countries and so on. I think one would have to make a distinction, use as of right and use by agreement with the other states. Here we come up against the realities, the hard realities of international relations.
- Hoveyda .. keep suggestions in the form they are wirk written because again this is linked to many otherparts of the whole thing. We don't know what would happen on the other one. We need safe ... so let's keep it as it was written and I think that under contemporary circumstances is well enough sought and thought in order

to explain what it is about

- NSG Let us accept that proposition of how wise is it and move to the next subject
- Sahovic It would be advisable to explain a little more this term functional jurisdiction and marine. It may not be unreasonable. If you want that the people understand what you have in mind. It's better to say it. This is a too general terminology hsed here.
- EMB May I perhaps give one clarification I mean the way this whole thing was organized is that here we are merely dealing with the question of limit whereas the content of jurisdiction is separated. So therefore this paragraph is very short because really the substance of thematter is dealt with in part II.

LaQue Is there reference somewhere to problems created by overlapping?

Pardo We are coming to them.

- NSG In response to Mr. Sahovic's memarks in the first paragraph where one described the interpretation of the phrase exclusive economic zone on page 25 there is reference to rights over resources and jurisdiction for a number of purposeswhich is mix in a sense is descriptive of what is meant by functional jurisdiction but I agree that an asterisk or a footnote at point which takes the phrase functional jurisdiction, a very nice phrase I think, and not widely used in international law and may indeed by original with this gréoup would be worth including.
- EMB Perhaps I may say one more thing in this connection. The term functional jurisdiction has been explained in detail in the introduction to this piece which now we have not discussed in detail but this follows on the introduction where it is laid out.

- NSG Everyond may not be flipping back and forth as I was not to the introduction so it might be helpful in an edited version of this if there's another one to include that.
- Emich I can see the reason why this paragraph here is rathershort. Nevertheless, I don't know maybe the phrase here to balance the expanding interest of the coastal state with the interest of other states, ther might also be a footnote .. how come that this limit balances the interests of other states?
- AP I said is intended to balance, I didn't say did balance. I don't think it does.
- Emich I don't say that it intentded ...
- AP The provisions on navigation, the laying of submarine pipelines are intedded to balance the sovereign rights of a resource exclusive jurisdiction over scientific research etc.
- Busha .. possibly a reference to what follows on pages 40 to 43 I think it is might be the solution to this, 40 to 44, there's a very discussion of the content of the facie of rights that a state exercises in the exclusive economic zone and since this is rather brief reference as Mrs. Borgese has pointed out, maybe just put a footnote saying see pages 40 to 44 might be ...
- Arrhenius Would it perhaps be practical, an edited version of this to have a glossary that would connect all of these terms and refer to wherever they occur?
- NSG Duly recorded your very helpful suggestion. Also cross references perhaps more than there are to other parts of the text such as pages 40 to 44 to which Mr. Busha referred a couple of minutes age. I was thumbing through tring to find that section just before he made his remarks and I couldn't put my hands on it.

- Emich Of editing, if I might go back to point 3 on page 24, territorial sea, comments and suggestions, it says on the last phrase usefulness of the eonference-ete-- concept etc., however be commented upon later number 10. Now Iwas looking in these corrections which we got. Number 10 says see page 32ff but that is on 32.
- NSG Should be page 27. Now we move to the question of the continental shelf. A can of worms if there ever was one. An Raxda admirable discussion of the concept and the conventional views of the continental shelf, a statement of the reflefinition of the continental shelf in the snt and then comments which lead to some radical suggestions if I may say so in the paragraph on the middle of the page 27. I read to you. "It is accordingly proposed that the entire section on the continental shelf contained in the SNT be deleted and replaced by a provision providing appropriate payment by the international community through the proposed Internatinal Seabed Authority to coastal States in those few cases where submarine areas less than 200 meters dep extend beyond 200 miles from the coast." etcetera
- EMBIt's going to be a battle.Suffice it to remind whose who have not participated in the<br/>negotiations that this is the provision of the African States.<br/>It is the position of the Chairman of the First CommitteeAPNot all but some
- EMB It does have a reasonable backing in the conference.
- AP It also has reasonable opposition.
- EMB It has violent opposition, and there are the more powerful states that are opposing it. Here again, do we want to build a new international economic order or don't we? If we don't then it's okay, let's forget about it, but if we are serious about the new international economic order, this hits it in the face. This is the extension of the old order and not

the advancement of the new one.

- NSG The suggestion has been made that we postpone extensive discussion of this point until Ambassador Engo is here. I don't know whether that is the wish of the group but it certainly bould be ... to have him present and able to state his position.
- Palma clarification, please. If I must understand correctly the meaning of the last paragraph, the item on page 27 does it refer to the cases for instance of Argentina, Canada, United States, those are the cases.

AP Argentina, Canada, Australia

EmB India

AP United States

NSG Particularly in the northern

AP New Zealand

- EMB But the trouble it seems to me with all this part of part II of the NT is that it clings to an antiquated nomenclature. It tries to innovate in some areas and then the terminalogy is not adapted to the changes that it itself makes.
- Palma Because this from a geographical point of view is such a rare phenomenon. It occurs only in certain parts of the world, enormous continental shelf.
- NSG May I welcome Professor Louis Sohn? who joins us. I think you know almost everybody, and we're very glad to have you with us. What we're doing is now we're going through the document which is in your folder and we are seriatim going through the various crucial issues that arise at the moment in section I of the basic NT and we are now on page 26, 27, the continental shelf.

Skoglund in the new international economic order is that we recognize the sovereign rights of every state for over natural resources and so on but I have the feeling here that we are some kind of erosion of sovereignty. We are talking about using and so on and so on. I don't know if it was some misunderstanding but Mrs. Borgese referred to the NIEO and I understand that this is a real test cast.

NSG What did you mean by that?

- EMB Again, it seems to me that this enormous extension of the continental shelf is an inroad in the common heritage. There's an inroad into the small area that can be administered for the benefit especially of the poorer nations, that is it is to the advantage of very few and it is to the disadvantage of very many nations and that anything that is to the advantage of very few nations and to the disadvantage of very many including the poorer ones to me is a violation of the bopes for a new NIEO. This paragraph in particular perhaps even more so than the one on the baselines puts into teopardy the whole work of the 1st committee. It is useless to speak of the common heritage and of redistributing these resources for the benefit of the poorer nations and of controlling these resources and their prices and their marketing in favor of the poorer nations If we maintain this paragraph, these two things are strictly contradictory.
- Emich I couldn't agree more that the continental shelf concept has lost its raison d'etre and that it should really subsume with the concept of the economic zone and of the extensive rights of coastal states within the economic zone and I feel that as I think a number of states have advocated since the very beginning when I was on the seabed committee that if we retain this concept then it would simply mean that no economical viable international area can be built and that it was a very nice and beautiful n

academic exercise which we are doing but from the economical and this is the point we are concentrating here with view of the creation and of the distribution of the wealth but it simply would not work. There would hardly anything be left.

NSG Very succinctly stated.

- I would like in order to expedite the work on this part, on this Hoveyda section, to make a suggestion. Maybe we should somewhere introduce few lines saying that all this concept which comes under the general title of the limits of national jurisdiction in o-ean space that all these concepts are more iverlapping each other and should be looked during the negotiations after what is decided on each of them. If the baselines for example areagreed upon then others should be limited. If the continental shelf is agreed upon then others should be taken away. What I mean is some general remark that these are concepts that overlap each other and once the negotiations are advanced a revision of them should be undertaken, something along these lines in order to make it clear we can't have at the same time all of them reaffirmed where they are contradictory in some sense.
  - NSG That's very helpful. I think this is a kind of statistic if the continental shelf limits difficult though they are to define are accepted in effect as the equivalent of the EEZ, then the several countries who benefit have been already mentioned. They are the Soviet Union, Canada, the United States, Australia, Argentina. I think taking of these five into account we are talking about something like in the extension of their rights over ocean space and certain aspects of ocean space, we are talking about close to 20 percent of all ocean space and I haven't mentioned a single poor country, relatively poor country in mentioning them. I think that's really very much the crux also of what Mrs. Emich was getting at because the residium then is likely to be too small I think many of us would agree to be a viable economic enterprise.

LaQue If I'm not mistaken, the continental shelf jurisdiction only over seabed resources and said nothing about natural resources or other things encompassed in the concept of the economic zone. Apparently the economic zone conept takes care of all the resources previously dealt with/th the continental shelf plus some others and as you have suggested here, the continental shelf in terms of jurisdiction over resources is superceded by the economic zone and doesnot need to be dealt with.

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- AP Yes, but the political implient importance of the extension beyond 200 miles lies in this that there are, it has been proved, there are petroleum resources which lie on the outer edge of the continental margin in some cases beyond 200 miles from the coast and the coastal state in these cases wishes to control these rescurces.
- LaQue I didn't mean to challenge the notion that we'll have to deal with the extension of the continental shelf beyond the 200 mile zone. It still needs to be dealt with but presumably can be dealt with in terms of the economic zone rather than in terms of the continental shelf.
- I think we ought to divide the issue perhaps in two parts one is or Sohn three parts, I mean, as was just pointed out. Any continental shelf within 200 miles is taken care of really by other provisions. Then you have our two separate issues about the continental shelf beyond. One the traditional continental shelf down to 200 meters which among other things embrases of course all the reas between the United Kingdom and Norway which are very rich in resources. Second, however, you have the area beyond the 200 meters down to the X limits of the continental margin and in a way what we are seeing here is a bottle about the 200 meter line beyond 200 miles but also extending it even further and here I would like to perhaps remind the group that one of the countries very interested in that extension is India because in India it just happens that they have very little ENNEXENTEL continental shelf down to 200 meters. But they have tremendous margin going out 500 or 600 miles and

to that degree that area might be wery rich in resources. And therefore India which was originally for very strict limits after some investigation by their experts decided to change around. And the same happened even to a country like Kenya which discovered that they have a little piece that might be of importance beyond the 200 miles area and therefore I think you have to remember that it's not just the 5 countries of the southern hemisphere but there are various interests/around the world.

Wouldn't China also be one of them?

- Sohn China would be another one but China has been very quiet on that particular issue.
- AP China would be another one if of course it gets control of Taiwan. Otherwise I doubt whether they could extend their legal continental shelf more than 200 miles because they face the Rykyou islands, Taiwan, and the whole chain of islands, so they can't. But if they gain control of Taiwan of course, then it might be possible.
- Sahovic After all this debate my impression is that the proposal, the paragraph is a good one, so I will keep it if you allow me to say.
- NSG We will be discussing some of these points again as you know in part II. They come up again. Ambassador Hoveyda pointed it out to us several times. I wonder then if we shouldn't register our understanding of aspects of the issue and then move on because the islands issue andothers are irrelevant here and the islands point, there is a question of ambiguity of definition and there is a proposal for dealing with the problem by a tripartite classification of island areas an attempt to lessen ambiguity and to minimize conflict.

AP

?

I would just say that the island issue is a very complex issue

that it is almost impossible to make proposals that would satisfy everybody that the suggestions made in the text is by no means the ideal but that at least I think it would tend to diminish the inequities of the present provisons in the SNT which are meally the lowest common denominator.

- NSG Shall we move on then? We have the final, the next to the last, the penultimate topic of part I the deliminitation of areas under national sovereignty of jurisdiction of states lying adjacent or opposite to each other. As I recall the text which I didn't have time to look at again, basically the snt has adopted the definitions and criteria of the 1958 treaty with the excpetion of the exclusive economic zone. Is that correct?'
  - No the 1958 convention had provision on delimitation with regard to the contiguous zone, the SNT has no provision on delimitation with regard to the contiguous zone, I don't know why. The With regard to the exclusive economic zone on the other hand, they have provisions but they are really well essentially it's be agreement between the states concerned The text actually is erroneous on this and it should be supplemented by a look at the corrections.

NSG Page 29 line 32

AP

AP Page 29 line 36 is the essential one. The criteria adopted is agreement median line modibiable by special circumstances and not equidistant special circumstances. It's here.

NSG There are three corrections on page 29.

AP Essentially the rule in the negofiating text is agreement between the states concerned and what I gay is that although the matter is very complex. very difficult, agreement between

the states concerned in respect of delimitation as the prevelant criterion is insufficient and is likely to provoke conflict and the conflict can scarcely be alleviated by the provisions with regard to dispute settlement which permit states to aboid dispute settlement in boundary delimitation questions and this is specifically provided for. There is no obligation for states to go to the special dispute settlement procedure in repsect of boundary delimitation. So essentially the issue of delimitation is totally unresolved and is not tackled seriously.

- Sohn Small correction. The dispute settlement text does not exclude other disputes automatically. It gives a stated option to do it and of course some countries like Greece and Turkey that have some difficulty about the problem  $\bar{x}$ might be excluded. But it doesnot mean that all 146 states are going to be excluded. Not it doesn't. The United States is not going to exclude it probably.
- AP All states that are likely to have boundrary disputes with regard to the limits of their national jurisdiction are rather likely to reserve their position on this for dispute settlement purposes. And this is particularly applicable to my area in the Mediterranean.

#### NSG Gådney Holt

SH Going to ask another naive quesiton about the Mediterranean and elsewhere. I find this very ambiguous with respect to the bwoad areas round islands off coastal states. What were small problems with respect to territorial waters become enormously multiplied.

## AP Indeed yes.

And this is the defect with respect to the postion on islands. Any small rock like for instance Lampione in the Mediterranean has according to the SNT the same rights to extensive marine

areas as Tunisia and when since Lampione does actually have a few dozen inhabitants and there are a couple of fishermen there it's not a rock xx which cannot sustain human habitation. There are humans. There is human habitation. Yet it has the same type of rights as Tunisia and this is manifestly unjust. And this type of provision is likely to lead to dispute particularly when the delimitation of boundaries is left essentially to agreement between the states concerned modifiable by special circumstances and so on. It's inviting conflict and dispute and similar situations arise in various other parts of the world. Take the east China sea, South China Sea, I'm sorry, where there are innumerable small sandbanks small rocks, which do indeed you do manage to set up a hous on it but they are so small and yet they have baselines, territorial sea, contiguous zone, exclusive economic zone and continental shelf, and then you oppose this, the claim based on such little minute pieces of land to the claim of the coastal states in the area and here you really can get into serious conflict.

NSG There's no problem. China claims all the problems in the whole area. There are chinese claims on them of course.

AP

This gives undue importance to pieces of land which should not have this importance.

Sohn I think what's important to point out is that it provides you, unlike the 58 treaty, it should be done with equitable principles whi international court of justice in last few cases has emphasized in other connections. That's one point. And second, even the specia circumstances provision is not an impossible one. We have seen for instance in the Persian gulf where there aremany problems that Iran was able to make agreement with practically all its neighbors in which in some cases they book account of the islands and sometime they forgot about the island or disregarded the islands and sometime; gave it half weight. The same is true between Italy and Yugoslavia where they decided to make similar arrangements. They didn't take

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account of every island but some islands and I think this is probably reasonable and one can hope that most countries are going to be reasonable.

AP

May I respectfully disagree with Professor Sohn. At the time when indeed these disagreements in the Persian Gulf and the Asiatic were made what we had was the 1959 Geneva convention. In short there was question only of jurisdiction, sovereignty over the territorial sea but here we have an EEZ not 3 or 6 or 12 miles as in 1958. We have here the possibility through the possession of a minute piece of land which can sustain human habitation in the sense of a construction which can have sovereignty, jurisdiction at least over 130,000 square m iles which in some case can be very valuabl and can give, in addition to being valuable in terms of resources valuable politically in the sense of indirectly controlling traffic. Not directly because that is provided for in the SNT but indirectly controlling traffice in the area. And this is the is difference/ That is why the type of conflict which will arise after or if the SNT is accepted in its essential featuresis likely to be more prolonged and more difficult to resolve than in the past. But however, this is a matter of appreciation of course.

On the Persian Gulf area, most of the agreement are dealing not Sohn with the territorial waters but they are dealing with the continental shelf which is important because area in the Persian gulf. On the other hand, the Yugoslav agreement of course was mostly concerned with the question of fisheries. Which is another area that is now covered by economic zone but therefore it is really as far as those areas are concerned the economic zone doesn't make much difference. But I agree with Ambassador Pardo that in many respects the problem now is much worse than it was because before only a few states relatively were opposite each other on the continental shelf or opposite each other with respect to territorial waters. There is a much larger number now if you extend those boundaries 200 miles into the sea and of course in areas like Caribbean and Mediterranean and few others, now people that were not before facing the problem have to face the problem.

where the

Arhennius difficulty in the arbitrariness of defining ...

Pardo

of just one square kilometer controlled just a vast inea or two or 5. Where does one draw the line. It has to be arbitrary to some extent but at least draw some line some where and again with regard to criteria for delimitation of course there must be agreement between the states concerned but and of course there has to be I have no quarrel with the agreement with the criterion of agreement between the states concerned or the special circumstances but this mast be supplemented & feel by some other slightly more precise criteria, particularly in view of the criteriaon of the dispute settlement provision which are perhaps are unlikely to cover all the cases which are likely to arise. And this is serious. However that it is a very difficult question, very difficult to reconcile the states ooncerned on any particular point on this and in fact and in fact I would hope that this meeting woudl produce some suggestions.

lies. It would be terrible if an island

- Since you're concerned about the extension of the jurisdiction LaQue relative to the size of the island, could you establish a maximum ratio at which could have
- This has been one of the unofficial suggestions which have been AP made also. There have been a variety of suggestions on the questions of islands ranging from the suggestion that every island should be considered on its merits and therefore no general rule should be made, right down to specific criteria but somehow or rather all of these suggestions can be criticized from one point of view or the other.
- Of course the problem is very important to be clarified and I Sahovic agree that it would be good to have more precise criteria. Of course the circumstances are very different but I don't know if it is advisable method recommend in such cases and I have seen in many places here up to now a kind of settlement procedures. The recommending states to go to peacful settlement procedure is

is not the solution of the problem. It would be good to explore it would be better maybe to explore the first step more the possibility to define some to formulate some criteria which would maybe succeed to have a number of states which would declare themselves in favor of such criterias. The settlement procedure is a last step from my point of view, that one which has to be in the **first** final analysis be the only solution. But I think that there are more places, there are still places for exploration of new criteria, maybe more flexible, maybe more wide.

I would agree to that, eertainly with regard to the size ratio, with-regard-to-the between the size of the island and the size of the seas it might come under its functional jurisdiction, it seems to me that that's as reasonable a proposition to consider again I'm sure you have as one that sets some ratio with regard to baselines between areas of water encompassed between headlands and so on. Any of these formulations have an arbitrary quality about them.

And archipelagos would of course be the same thing.

Let's move to this last, accepting this last judgment, let us move to the last point here and we will have completed their discussion at least to part I and I might say encouragingly that although we move very slowly here on section I part I it was partly because we were not, we didn't have experience in talking among ourselves about these things. I should think that the pace hereafter will be considerably, or can be considerably greater since we now understand I think a little better just how we're proceeding. The/item is a question of rule regarding the publicity given to decisions on the part of the coastal states on jurisdictional limits of the sort we've been talking about. Now here I simply want to call your attention to the fact that under comments and suggestions in the · corrections sheet, there is a very considerable addendum that goes on page 31. For those of you that have the corrections sheets, if you will look on page 2 of the correction sheets and find page 31 on the left of page 2 or the reference to page 31,

NSG

you will see there is a new paragraph which substantially I think modifies the suggestions that now appear on page one of the main document. For those of you that did not see this before, I wonder if you want to take a minute to cast your eye over that revision which begins States are increasingly measuring the limits of their national jurisdiction from a straight or mixed baseline system. Let's just take a minute to look that over and then open the floor for discussion thereafter.

If I'm not mistaken in that new insertion the particular point to be noted is the recommendation taht the information regarding the national jurisdiction areas not only be recorded but that the records in the form of chargs and other records no doubt be deposited with the Secretary General of the international **xxkx** seabed authority or whichever integrative agency or institution is proposed in this document and that that body or that the secretary general of that body in turn has the obligation of notifying the various member states of the changes in national jurisdiction.

Is that a fair thing to emphasize. Essentially the whole purpose of the recommendation is to give more and more aertain publicity to the actions of states in the marine environment and this is particularly necessary in my view because of the extension of national jurisdiction in the marine environment the creation of new regimes in the marine environment and the increase of activities in the marine environment. It would appear desirable to give more certain publicity at any rate. I know there are methods for giving publicity now but it would be desirable to formalize this a little bit. Is there a discussion on this point.

Sohn I would like very strongly to support it. I think this is extremely important though looks technical. We had a case in Boston recently in which a Polish vessel was caught

AP

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mostly on the basis of the fact that certain lines were not drawn and the captain of the vessel did not know that there was a line in that particular area. Nobody in the United States I suppose knew it except people in in the... So it's very important to have things like that first drawn on the map, second wisk notified. The only/f<sup>omment</sup> would probably have is that it would be very helpful for many countries if some kind of technical assistance would be provided for them to do it because some of them might not have the necessary cartographic services to accomplish it.

Has it been considered that instead of relying on the national hydrographic or admiralty services that the issuance of navigation and jurisdictional information be centralized in some international agency? I suppose people have thought of this before. I just don't happen to know whether that's ever been seriously discussed.

- Sohn Of course IMCO has been doing some things with respect to drawing certain navigational lines and various straits and other dangerous areas and most of the states have accepted IMCO's jurisdiction on the subject. We would require just a little extension to give IMCO further jusisdiction to give us A technical assistance to draw those lines and 2nd receive the maps and distribute them to members.
- Busha It's very much a matter for the states involved. Professor Sohn is referring to the traffic separation schemes which are progressively being made obligatory in fact. But they have to be improved as pointed out later in this projection. by the coastal states, and the mechanism of conforming mariners is rather old-fashinned.

NSG

I would assume a scheme something like this. Since this clause makes it incumbant on the riparian state to provide information, if that information were provided to a central body, it presumably go into a data storage system that would be computerized, the computer would then be in a position to pull out that information, and indeed by means technical means which would not involve xEXXXXXX draftsman or anything of the sort, put out the charts with all the information that was required. That could be done very cheaplyonce the system were set up but obviously it is not something that is easy to set. It's something that's inexpensive to set up. Once it's set up one might also conceive of converting that information not simply to printed charts which we're accustomed to using and which are extremely romantic because they link us with the past, but to computer readouts on television screens so that the captain or navigator of any Kx vessel entering indeed as the vessel moves along can request from the central storage system/as to any one of a variety of kinds of information of the sort that's being discussed here as well as direct navigation information. Somebody must have thought of that.

We're all aware of the navigation satellite programs that are in progress now and I should think that it would be rather straightforward to get your location from the satellite and with relationship to any of these lines that we want to draw. It shouldn't be much of a job. The application of outer space technique to inner space problems would seems to be a logical possibility. But perhaps it is beyond the competence of thes group to deal with. We're now approaching our official termination hour for the day.

Some members had to quietly depart because we have a program on terrorism going on behind the doors there but I think that has been achieved now without any terror here. I don't know whether it is the desire of the group to close at this point

NSG

MB

aber

maybe for another half hour. We're at your

NSG

The ghings dinner... agenda large ... car comes at 4

Shall we go on for 15 minutes? The car will come to pick you up in 15 minutes. etc.

To continue and I assume we ought to move on to section 2 except that I'm staggered xxxx to observe that the 1st topic of section 2 on page 36 is baselines

EMB I think this raises basically now the issue of the archipelagic waters

- NSG On page 36 if you look on your correction sheet you'll see a page listed 3A it just takes the first half of the page and it is necessary to go down to line 31 which is near the bottom of the page small roman II, we delete, small roman II on page 36 and we substitute for it the entry on page, corrected page 3A starting the right of archipelagic sealanes passage, etc.
- AR NSG Arvid, do you want to lead Xx us through the significance of that then and we will be able to handle it better I think?
  - aP This is merely a description of the content of the SNT and of its attempt to balance the rights and duties of states in waters within baselines including archipelagic waters which have a special status. It does bring up the question of the reference to oceanic arbhipelagos belonging to continental states and I suggest that the purpose and meaning of this article is somewhat mysterious and I make a further comment in the appropriate note, but with regard with the other aspect of the text, there is really no comment.
- NSG Then it's less complicated that I had assumed... The material inserted ... less complicated....

- There are the a little bit further on on page 48 there are comments on archipelagic states in particular and here again there is a long new insertion which deletes the last paragraph all this paragraph.
- The crucial thing I gather in this discussion on page36 and 37 NSG on baselines dies refer to archipelagic states. I suggest we defer discussion of that particular phrase and the problems it rises until we get further into the section which will be tomorrow as I think Ambassador Pardo had suggested. Simply absorbing the insertion here that there are problems, serious problems relating to the desire, understandable enough of certain archipelagic states to extend sovereignty over waters that are enclosed by certain means of establishing baselines. If we move to the next mx notion of the territorial sea again now this is looking at it from another angle, than the one we had looked at before, we observe that, yes we observe in the comments on page 39 xx xxx summary of what occurred in the SNT that they the text does not state that the passage of a vessel which does not engage in the activities enumerated is innocent and this leaves this is another example of the ambiguity to which Mr. Pardo has referred several times. It enhances the element of subjectivity in the concept of innocent passage and it is urged that this ambiguity bediminished. There is also the problem of the question of straits used for international navigation which is of great concern to a number of countries including perhaps some represented here. Now what XXXX

I'm afraid these points are really rather superficial points but the points I want to make were first while the SNT attempts to define objective criteria for innocent passage. In fact it does not. The SNT says what types of passage are not innocent but does not say that passage which conforms to the criteria of the NT is by its nature innocent.

AP

AP

If one reads carefully it doesn't necessarily say that all passage which conforms in the various articles on passages through straits is necessarily innocent. It says what is not innocent but not at all everything else is innocent and so that in attempting to give greater precision to the concent of innocent passage, the net result could be, I don't say it is, but could be, to restrict still further the concept of innocent passage. This is one thing. The second point I was trying to make is that the concept of straits used for international navigation has not XEXENE really been clarified. What are straits used for international navigation? Does it means straits which can be used for international navigation in the sense that they would permit the passage of vessels of a certain type which are used for international navigation but which in practice are seldom used or is the concept restricted to straits which in fact are much used by international navigation which hundreds of vessels pass every year, and this has a certain amount of importance since trade channels could change. A strait which is now used for international navigation could in future if certain circumstances were to happen, circusmtances which may appear unlikely at present but could happen in the future.be used very rarely and other states which now seem of almost nil importance could become very important so here I suggest the clarification of the concept of innocent passage.

NSG It's also a clarification of what use means.

AP

Yes

AR NSG One really wants to be very precise about it, if even one vessel over some prolonged period of time were to use a strait for international passage, it would fit the terminology here employed. If one wished to broaden it to include straits that so far as we know have never been used for that purpose, then one would have to substitute the word usable for used but I wondered.

We have for instance the case of the Verkitsky straits. They could be used. They have been occasionally used in the past but I believe the Soviet Union does not concern them to be so used. In other words, they are not habitally used for international navigation. And so on. In other words, here the clarification would appear necessary and the final point which I haven't made explicitly but is implicit is that while there is an attempt to achieve a balance between the rights of the coastal states and the rights of maritime powers in passage through straits particularly through the introduction of transit passage at the same time and also very well the transit passage, at the same time the provisions could be contradictory if the coastal state wishes to exercise all the rights recognized to it under the SNT, it would km obviously impede naviagion. If the uses state were to exercise on whe other hand all the rights recognized to it under transit passage and innocent passage, it would and could and probably would impinge on the rights of coastal states. In other words the provisions are not harmonious and they can give rise to opposite interpretations in particular cases, interpretations which it would be difficult to resolve because disputes if they were to arise would probably arise in situations of a certain amount of political tension and this would be an added element in a certain political situation. However, I haven't expressed this precisely in the written text but this was my intension. So there are these three points.

81

Hoveyda

You remember very well that it was not possible [unintelligible ] [laughter] I agree with the problems you mentioned. They might give rise to disputes but I don't see how we can find another language so if we keep the comments as they are I think we draw somehow attention to the shortcomings of the text without appearing as naive not knowing that what is behind it

AP