Third United Nations Conference on the Law of the Sea

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Summary Records of Plenary Meetings
34th plenary meeting

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34th meeting

Tuesday, 9 July 1974, at 3.45 p.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

General Statements (*continued*)

1. Mr. GRAHAM-DOUGLAS (Nigeria) expressed his delegation's strong hope that, in future conferences, representatives of the recognized liberation movements in Africa would participate since the peoples represented by them had a substantial and positive interest in the objectives of the Conference.

2. As a coastal State and a developing nation, Nigeria had a keen interest in the issues that were to be discussed. Among those issues, the first he wished to emphasize was that of the extent of the territorial sea and, consequently, the extent of national jurisdiction beyond the shores of coastal States. In unquestionable consistency with the existing rules of international law, Nigeria had enacted legislation to extend its territorial sea to 12 nautical miles in 1967 and, subsequently, to 30 nautical miles in 1971. In both cases, the measure had been fully justified by national circumstances. An economic motivation, specifically the efforts aimed at diversifying the economy through industrialization and, consequently, the local processing of some primary products such as petroleum for which prospecting and exploitation was being carried on in offshore areas, had led his country to make its sovereignty over that zone secure. It could be maintained, however, that that motivation would be removed if an exclusive economic zone of 200 miles, which Nigeria whole-heartedly supported, were adopted. However, having been a victim of international intrigues during its civil war, intrigues which had been translated, for example, into sea-borne espionage in close proximity to its shores, Nigeria had been even more convinced of the need to extend its territorial sea to a distance of 30 miles. His delegation believed that that measure not only had been inevitable owing to national circumstances, but also represented a rational objective which could be the subject of international consideration, taking into account the corresponding rights of adjacent or opposite coastal States. For that reason, while it conceded the value of the proposed adoption of a territorial sea of 12 miles with a contiguous zone of 18 miles, Nigeria believed that a territorial sea of 30 miles was a preferable alternative.

3. With respect to the economic zone, the Government of Nigeria believed the rights of exploitation vested in the coastal State should be exclusive but, in exercise of its sovereign prerogative, it could confer upon other States rights of concurrent or preferential exploitation through bilateral or multilateral agreements.

4. With regard to the territorial sea, the Government of Nigeria would accord the right of innocent passage to all international shipping and similar rights would be granted with respect to overflights by foreign aircraft and the laying of submarine cables and pipelines.

5. Referring to the granting of exploitation rights to other countries, he pointed out that Nigeria, which already had such arrangements with other African countries, was willing to accord similar facilities to any other African nations that might need them. That would be in keeping with the Declaration of the Organization of African Unity adopted at Addis Ababa in 1973 (A/CONF.62/33).

6. The Government of Nigeria would continue to maintain its policy of facilitating access to the sea for the land-locked countries on its borders. It also hoped that any convention arising out of the Conference would satisfactorily define the rights of access to the sea of the land-locked and geographically disadvantaged countries. The corresponding obligations of the coastal States could be the subject of subsequent bilateral or regional agreements, taking account of the fact that in certain circumstances—when unsatisfactory relations existed between a coastal State and its land-locked neighbours for instance—it would be imprudent to entrust the right of access to the sea to the benevolence of the coastal State.

7. The Government of Nigeria believed that it would be very selfish for any coastal State to prevent other nations from carrying out scientific research within its territorial sea or economic zone. Such research, to the extent that it was necessary in the interest of mankind, should be freely conducted in the territorial sea and the exclusive economic zone. Nevertheless, his delegation wished to emphasize that the research must proceed with the prior consent of the coastal State, ensure the latter's fullest possible participation in every aspect of the research, offer facilities to the coastal State for the training of its nationals in the field of research, place the relevant information obtained at the disposal of the coastal State and ensure, whether it was carried out by one nation or by a group of nations, that it should never be a façade behind which activities would be undertaken which were inspired by other motives than the quest for knowledge.

8. The necessity of adequately controlling the pollution of the marine environment was another question of great importance, the solution of which would depend both on what measures were adopted by the coastal States and on the machinery for international control. His delegation therefore wished to see, in a convention, provisions for the prevention and reduction of pollution and compensation for damage arising from pollution. In that connexion, his delegation wished to emphasize the work of the Inter-Governmental Maritime Consultative Organization, under whose auspices the following Conventions had been concluded: the 1969 International Convention on Civil Liability for Oil Pollution Damage, the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and the 1973 International Convention for the Prevention of Pollution from Ships. Those Conventions, together with the conclusions of the deliberations at the United Nations Conference on the Human Environment,[1] held at Stockholm in 1972, should provide guidelines for the convention that might be concluded.

9. Turning to the question of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction, he said that the Government of Nigeria endorsed the Declaration of Principles embodied in the United Nations General Assembly resolution 2749 (XXV) and hoped that those principles would find their expression in the articles of a treaty that would give reality to the cardinal principle that the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction were the common heritage of mankind. To that end, it would support the establishment of an appropriate international régime. While it would reserve its position on the structure and functions of the appropriate Authority, his delegation believed that the Authority should be clearly insulated from great Power politics. Furthermore, the resources of the sea should be equitably distributed without prejudice to the rights of one nation or group of nations on the one

[1] See *Report of the United Nations Conference on the Human Environment* (United Nations publication, Sales No. E.73.II. A. 14).

hand, or to the relative advantages of some other nation or group of nations on the other hand. Regardless of the type of machinery for exploitation and distribution that might be adopted, due regard should be given not only to the technological contributions to exploration and exploitation which the advanced nations could offer, but also to the needs of the developing countries.

10. His delegation wished to emphasize the questions relating to the archipelagic States, islands and straits. Nigeria sympathized with the archipelagic States and wished to see appropriate criteria developed for determining their territorial integrity. Despite the acceptance that the concept of the "patrimonial sea" was receiving and the importance being given in that connexion to the question of passage through territorial waters, it would be inadvisable to dismiss the concept of "archipelagic waters". 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. Finally, with regard to straits, there was the problem of the possible overlapping of territorial waters. There was also the most important question of the overriding interest of the entire international community with respect to innocent or free passage of ships through straits, particularly where such straits fell exclusively within the territory of one State.

Mr. Mukuna Kabongo (Zaire), Vice-President, took the Chair.

11. Mr. RIPHAGEN (Netherlands) said that the Kingdom of the Netherlands comprised three territories: the Netherlands or Holland, Surinam, which was situated on the north coast of the South American continent, and the Netherlands Antilles, in the Caribbean area. Those three territories were at present part of one sovereign State; but that situation would change in the near future, since Surinam was to attain its independence at the end of 1975 and the Netherlands Antilles was to become an independent State within a few years, in accordance with the wishes of their respective peoples.

12. That development had an important bearing on the position that his delegation would take at the Conference. It could be said that the differences in respect of the geographical features, location and stage of economic development of the three territories reflected to some extent the more important differences between the various States represented at the Conference. Holland was a developed country, geographically disadvantaged by the fact that it bordered on the relatively narrow North Sea; Surinam would be a continental coastal State bordering on a large open sea, but it would belong to the category of developing nations. The Netherlands Antilles would also be in that category and would be a typical island State, with the features of an archipelago.

13. Surinam and the Netherlands Antilles had a great affinity with the Caribbean and with Latin America as a whole; accordingly, it was not surprising that those two parts of the Kingdom subscribed fully to the ideas contained in the Declaration of Santo Domingo of 1972.[2]

14. In view of that diversity, it was clear that only a convention on the law of the sea which accommodated the interests of all types of States, both developing and developed, geographically disadvantaged as well as other, would be acceptable to the Kingdom of the Netherlands. Fortunately, a convention of that kind was conceivable provided everyone kept in mind both the interests of the international community as a whole and the necessity of a fair and equitable distribution of the benefits to be derived from the sea.

15. The Netherlands felt that, during the long history of the law of the sea, and even during the preparatory work for the Conference, too much emphasis had been put on the rights of individual States; it was high time to devote more attention to the duties of States, both towards the international community and towards those States which, for reasons of geography or because of their level of technological development, were less privileged than others with respect to the benefits to be drawn from the use of the seas.

16. With regard to the duties of States towards the international community as a whole, the Conference should bear in mind that the marine environement was, in principle, one organic whole, and that that was of particular importance for the solution of the problems relating to the prevention of pollution of the marine environment. In recent years, several international agreements had been adopted relating to prevention of pollution from ships and the control of dumping from ships and aircraft. It remained therefore to establish international standards imposing duties on coastal States for the purpose of preventing the pollution due to land-based activities and offshore mining.

17. Another such duty related to international navigation. Present-day conditions of shipping underlined the necessity of international rules for navigation. Likewise, it was the duty of coastal States to permit land-locked States to have access to and from the sea and not to hamper navigation to and from States bordering semi-enclosed seas.

18. Both over-exploitation and under-exploitation of fish stocks resulted in a waste of human food. In that area also, the interests of the international community required all the States concerned to co-operate and adopt measures to prevent such waste.

19. All users of the sea should benefit from the results of scientific research on the marine environment. States conducting such research had the duty to share the results and to transfer technology to those States that were not in a position to acquire such knowledge by their own means. All States, particularly States near the coast where the research was conducted, had the duty not to prevent or hamper research activities.

20. The Netherlands delegation felt that the non-living resources of the sea-bed and ocean floor should play a fundamental role in development co-operation. As far back as 1968, the Government of the Netherlands, in reply to an inquiry from the Secretary-General of the United Nations, had presented an outline of an international régime for the exploitation of the non-renewable resources of the sea-bed beyond the continental shelf, the primary purpose of which was to provide funds for aid to developing countries. The basic principle was that there should be an area which was not subject to the classic system of arbitrary distribution of territories and benefits among States—an area which would be managed by the international community, the benefits of which would be used to promote the economic development of those countries which needed outside assistance in order to support their populations.

21. That concept of a common heritage of mankind had been applied by General Assembly resolution 2749 (XXV) to the resources of the sea-bed and ocean floor and the subsoil thereof "beyond the limits of national jurisdiction". It was neither necessary nor advisable to link up "jurisdiction" and "benefits", since a suitable part of the revenue from exploitation activities could be transferred to the developing countries in accordance with their needs, thus promoting the basic purpose of the concept of a common heritage. In addition, his delegation felt that a stop should be put to the trend towards national annexation of the sea-bed and subsoil and their non-living resources by coastal States, at least as far as benefits were concerned.

22. That was all the more imperative since there was no correlation between the geographical situation of a State vis-à-vis

[2] *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21* and corrigendum, annex I, sect. 2.

the seas and its stage of economic development. It had been said at the Conference that the extension by coastal States of its national jurisdiction over areas of the sea favoured the developing States. The fallaciousness of that argument was indicated by the fact that the trend had begun with the Truman Proclamation, which had not emanated from a developing country. Furthermore, a number of land-locked countries were among the least developed countries. Clearly, extension of the national jurisdiction of coastal States favoured those nations that were already among the richest.

23. The Netherlands delegation considered that every State which derived revenue from the exploitation of the mineral resources of the sea-bed and subsoil beyond its territorial waters and continental shelf—those notions taken in a limited sense—should share such revenue with those countries which most needed it for their economic development. Obviously, the transfer of revenue should be carried out according to the needs of both the transferring country and the receiving country. The transfer of revenue presupposed that exploitation activities would yield profits, which raised the questions: which authority was to decide whether exploitation was to be allowed and if so, by whom, where the product was to go, and what revenues it would bring in. All those questions were related to the concept of jurisdiction and the matter of its limits.

24. The question of limits lost some of its significance if it was accepted that, whatever the limits eventually adopted, the authority which exercised jurisdiction within those limits was bound to fulfil its duties towards the international community and to contribute to development co-operation through the transfer of revenue. Even so, there remained two important problems: the problem of what would be a suitable size for the area of the sea-bed and subsoil the resources of which were the common heritage of mankind and which would be directly managed by the international community, and the problem of equitable distribution of the remaining area. The two problems were closely interrelated.

25. Since 1968 the Netherlands had constantly advocated that the size of the area under international jurisdiction should be as large as possible. His delegation recognized, however, that the trend of opinion was rather to enlarge the sea areas to be placed under the national jurisdiction of some coastal States. Yet the consequence of that attitude would be a fantastic increase in the existing geographical inequality between States, which could only lead to friction and conflict. Moreover, the sea-bed and subsoil constituted a natural prolongation of the territories of all States, land-locked, coastal or island.

26. His delegation had noted with approval the Kampala Declaration contained in document A/CONF.62/23, which was a timely reminder of the need for the Conference to find a solution to the problem.

27. It should be stressed that on the question of limits the island States should be treated on exactly the same footing as continental States.

28. His delegation felt that early consideration should be given to the important question of the settlement of disputes arising in relation to the interpretation and the application of the new convention on the law of the sea. The convention could be acceptable only if it provided for a system or systems of compulsory peaceful settlement of disputes, and he shared the opinion of El Salvador that that was a *sine qua non*. That did not necessarily mean that there should be one compulsory procedure for the solution of all disputes. A distinction would have to be made between various types of dispute and the most suitable procedure would have to be applied in each case.

29. Mr. KHALFAN (United Arab Emirates) noted that the sea was the basis of the economy and welfare of his people. The coasts of his State stretched along the Arabian Gulf and the Gulf of Oman. From the coastal waters of the United Arab Emirates half of the annual production of oil was extracted; more than 200 islands were subject to its exclusive sovereignty and the annual catch of fish within coastal waters was increasing gradually to satisfy the growing needs of the population. Its coasts were opposite and adjacent to the coasts of a number of other States. Its relations with those States were governed by the principles of friendship and co-operation and the settlement of disputes by peaceful means without resort to coercion, in conformity with the Charter of the United Nations.

30. The new international rules which the Conference was to formulate would never be universal or effective if the peoples who were struggling for their freedom and independence did not participate actively in the formulation of such rules. Consequently, the Palestine Liberation Organization and the African liberation movements should be represented at the Conference.

31. In his view the Conference was a land-mark 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. Certain rules had become part of international law: the sovereign rights of coastal States over the territorial sea, methods of measurement of the territorial sea, innocent passage, the delimitation of inland waters, the legal régime of bays the coasts of which belonged to a single State, the definition of islands and low-tide elevations, the precise scope of the duties of foreign ships sailing in the territorial sea or inland waters and the inherent right of the coastal State to decide the conditions of access of such vessels.

32. The right of innocent passage was a natural consequence of the freedom of navigation on the high seas. Consequently, observing that limitation, ships sailing in the territorial sea should refrain, except in the case of distress or *force majeure*, from stopping or from conducting scientific research or survey activities without the prior authorization of the coastal State, or from conducting any manoeuvres other than those having a direct bearing on passage. The concept of innocent passage should apply to all parts of the territorial sea, irrespective of their geographical configuration. Moreover, the Geneva Convention did not include any article providing for the obligation to ensure protection, but only declared that the coastal State must not hamper it. Consequently, it was essential that the authorities should take any steps within their power to provide protection.

33. There should be full freedom of navigation to pass through international straits, without discrimination between foreign flags.

34. In regard to the breadth of the territorial sea, every coastal State, taking into consideration its peculiarities, had the right to determine what that breadth should be.

35. The 12-nautical-mile limit, which had been challenged in the first half of the century, was gaining further support. No international convention had decided on the conditions to be fulfilled to permit a maritime area to be included in the régime of historic waters. The Conference should do that, bearing in mind the vital interest of the States concerned and in particular the importance attributed to the prescriptive title.

36. Each coastal State had the right to establish an economic zone beyond the territorial sea, and to exercise therein sovereignty in regard to exploration and exploitation of natural resources in its waters, its sea-bed and its subsoil. That right, which was not preferential but exclusive, should not be infringed by any foreign authority, but at the same time it should not affect freedom of navigation, of overflight or of the right to lay submarine cables and pipelines.

37. Where the coasts of two States were opposite or adjacent to each other, the median line should be the line of demarcation of the economic zone, unless otherwise prescribed by mutual agreements, or unless other boundary lines were justified by historic title or other special circumstances.

38. The General Assembly had adopted the principle that the resources of the sea-bed and ocean floor were the common heritage of mankind. Consequently, it was necessary to inten-

sify and unify co-operation between peoples, for poverty and greed were always sources of tension and conflict.

39. While the First United Nations Conference on the Law of the Sea had approved four Conventions—on the high seas, the continental shelf, the territorial sea and the conservation of the living resources of the high seas—the work of the Third Conference should be embodied in one single convention. In contrast to the surface of the earth, the surface of the sea was connected and not separated by physical barriers and the law of the sea should reflect that characteristic.

40. Mr. PARSI (Iran), speaking in exercise of the right of reply, claimed that the representative of the United Arab Emirates had used an improper term in referring to the Persian Gulf, which washed 450 miles of the Persian coast and had been known by that name in books of history and geography published in all languages, including Arabic. To avoid appealing to ancient or contemporary authorities, he would refer only to some national laws of the States bordering the Persian Gulf, including the United Arab Emirates. Those laws repeatedly used the traditional name, as could be seen by reference to pages 23–30 of volume 1 of the United Nations Legislative Series.[3] The fabricated label used, which was of recent vintage, was a distortion of fact and would serve no purpose other than to create tension and friction in an area where regional harmony and co-operation were of vital importance to the coastal States.

The meeting rose at 5.10 p.m.

[3] United Nations publication, Sales No. 1951.V.2.

35th meeting

Wednesday, 10 July 1974, at 10.50 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

In the absence of the President, Mrs. Chibesakunda (Zambia), Vice-President, took the Chair.

General statements (*continued*)

1. Mr. PRANDLER (Hungary) said that the adoption of the rules of procedure had demonstrated that consensus was within the reach of the Conference, given the will to negotiate and compromise. His delegation had not been fully satisfied with all the provisions of the rules of procedure but saw it as a good sign that the Conference had decided to seek generally acceptable provisions for the law of the sea.

2. He wished to comment on two points of a general character. The first concerned the universality of the Conference; as a signatory of the Act of the International Conference on ending the war and restoring peace in Viet-Nam of March 1973, his country could not accept the representation of South Viet-Nam at the Conference. As a co-signatory of the Paris Agreements, it deplored the failure to send an invitation to the Provisional Revolutionary Government of South Viet-Nam and it made a formal reservation about the unilateral representation of South Viet-Nam at the Conference. His country understood and supported the position of the Democratic Republic of Viet-Nam, whose Government had felt unable to participate in the Conference. The Hungarian position was dictated by the principle of universality, which would be strengthened if all the peoples fighting for their national independence were given an opportunity to be represented at the Conference. The Conference should invite the national liberation movements as observers; that would be in conformity with the policy of the General Assembly concerning the invitation of those organizations to the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.

3. The second point concerned the atmosphere of the Conference. His delegation was happy to note the serious approach of delegations to the issues facing the Conference and it was all the more regrettable that a discordant note had been introduced into the general debate. The Conference would be well advised not to let itself be turned away from the real issues; such an attitude would demonstrate the sense of responsibility felt by the overwhelming majority of delegations.

4. Since the 1958 Geneva Conference on the Law of the Sea it had become clear that a strict distinction could not be maintained between the codification and the progressive development of international law. In view of the emergence of new States and the rapid political, economic and technological transformation of the world, the community of nations could not wait for the formulation of rules of customary law which could serve as a basis for the codification *stricto sensu* of the law of the sea. New rules must be established, developing international law in a bold but careful manner.

5. His country's approach to the questions of the law of the sea was determined by the fact that it was a socialist State that happened to be land-locked. The land-locked States attached primary importance to the recognition of their right of access to the sea, their participation in navigation on the seas without discrimination and their sharing of the benefits of the oceans. The European land-locked countries, because of bilateral agreements with their neighbouring coastal States, enjoyed a more advantageous position than developing land-locked countries. Yet they too needed to be assured of unimpeded access to the seas and of an equitable share in the benefits of the resources of the seas.

6. With that in mind, his Government, together with other land-locked countries, had submitted draft articles (A/9021 and Corr. 1 and 3, vol. III sect. 5) to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction designed to establish and develop the international legal principles formulated in the 1958 Geneva Conventions and the Convention on Transit Trade of Land-locked States, adopted in New York in 1965.[1] It was an important task of the Conference to incorporate those legal principles and the rules derived from them in the new convention.

7. His delegation attached great importance to the traditional principle of the freedom of the seas and the legal rights derived therefrom, as enumerated, though not exhaustively, in the 1958 Conventions. The new convention should be founded on that principle and should determine its precise content and the reasonable limits within which it should prevail.

8. In his delegation's view, the breadth of the territorial sea should not exceed the distance essential to the protection of the most important interests of the coastal States. The distance should be fixed at 12 nautical miles, in conformity with the practice of most States. One of the serious shortcomings of the

[1] United Nations, *Treaty Series*, vol. 597, p. 42.