

# **Third United Nations Conference on the Law of the Sea**

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-  
**A/CONF.62/SR.45**

## **Summary Records of Plenary Meetings 45<sup>th</sup> plenary meeting**

*Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume I (Summary Records of Plenary Meetings of the First and Second Sessions, and of Meetings of the General Committee, Second Session)*

49. The generous act of tribute to the Liberator honoured both his memory and Venezuela. However, it should also be interpreted as a demonstration of international unity and solidarity, so indispensable in contemporary multinational society. Venezuela wished to interpret that grand gesture of friendly nations, not only as proof of their admiration for his hero and friendship for Venezuela, but also as a promise and hope whereby nearly all the countries of the world were seeking the instruments for understanding among peoples that would transcend naturally opposing interests and inevitable ideological differences and political systems.

50. Venezuela was satisfied and proud to serve as the scene of such an example of universal brotherhood since it was firmly convinced that only such fraternity could combine the necessary efforts and sacrifices to save the human race from the multiple dangers which it faced. However, with imagination and daring, there was still time to make the corrections which history required. Today's world and that of succeeding generations could still be saved from disaster. International social justice called for social and economic levelling which was only being partially achieved and in very few nations of the international community. The task was arduous, but inevitable and necessary.

51. Simón Bolívar had stated that the lessons of experience should not be forgotten and that the schools of Greece, Rome, France, England and America had taught the difficult science of establishing and preserving nations through appropriate, just, legitimate and, above all, useful laws, never forgetting that excellency in government did not reside in its theory, form or machinery, but in its being appropriate to the nature and character of the nation for which it was instituted.

52. He hoped that those great thoughts of the Liberator would guide peoples and Governments and that the spirit of that man of vision would inspire all to find the best way of bringing final and permanent peace to nations.

53. The CHAIRMAN thanked the Minister for Foreign Affairs of Venezuela for his statement and said that, accompanied by the Chairmen of the Main Committees and the Drafting Committee, the Rapporteur-General, the Special Representative of the Secretary-General and the Executive Secretary, he would proceed to the National Pantheon to lay a wreath in commemoration of the anniversary of Simón Bolívar's birth.

*The meeting rose at 12.50 p.m.*

## 45th meeting

Friday, 26 July 1974, at 10.30 a.m.

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

### **Address by Mr. Luis Echeverría Alvarez, President of the United Mexican States**

*Mr. Luis Echeverría Alvarez, President of the United Mexican States, was escorted to the rostrum.*

1. The PRESIDENT, speaking on behalf of the Conference, welcomed the President of the United Mexican States to the present meeting, which had been specially convened to hear an address from him. The Conference was honoured by the visit of the President, who had already shown his keen interest in promoting international accord in the sphere of economic relations between States by his initiative aimed at securing the adoption by the international community of a charter of economic rights and duties. The new international legal order governing the use of the oceans and their resources which the Conference was expected to formulate should, if it satisfied the principles of justice and equity, be a stimulus and an inspiration in the framing of that charter.

2. President ECHEVERRIA ALVAREZ (Mexico) said that he was honoured to bring in person to the sister nation of Venezuela, with which Mexico shared so many ideals, a tribute of friendship and gratitude from the Mexican people. He wished to transmit the Mexican people's affection and appreciation to the President of Venezuela, Carlos Andrés Pérez, the inheritor of the tradition of Bolívar, a friend, and a Latin American statesman. In greeting the distinguished assembly of representatives, he expressed his most fervent wishes for the success of the Conference and, on behalf of the delegation of Mexico, he paid a tribute to the President of the Conference, Mr. Amerasinghe, for the wisdom with which he was directing its proceedings.

3. It was the first time that a major conference for the codification of the law of nations had been held in a developing country. Venezuela, the country that was host to a conference of a unique kind, complexity and size, was providing a magnifi-

cent example of how a people and a government could assume and discharge responsibilities and tasks of unusual scope.

4. Mexico had a long and rich maritime tradition. Since the remote times when the early Chinese sailing ships had crossed the oceans, Mexico had served as a bridge between the commerce, culture and communications of the East and West.

5. Extending in all for 10,000 kilometres, the Mexican coastline was one of the longest in the world. Its coasts were bathed by three seas—the Pacific, the Gulf of Mexico and the Caribbean, in addition to the Gulf of California. The ample stocks of fish in Mexican waters were well known. The fact that the submerged part of the land territory contained vast deposits of oil and a number of minerals explained his Government's special concern to preserve and manage the marine resources for the benefit and enjoyment of the Mexican nation. It also accounted for Mexico's keen interest in the present Conference, quite apart from its desire to contribute to the creation of a new universal legal order for the sea.

6. The community of nations had been convened for a third time in order to codify and develop the law of the sea. What had begun in 1967 as a limited effort simply to establish a régime of the international sea-bed had grown into a vast undertaking for the review of maritime law as a whole. Thus, barely 15 years after its elaboration, it had been deemed necessary drastically to amend the impressive and almost comprehensive code of the sea constituted by the four Geneva Conventions of 1958 and even to question some of its basic principles.

7. The vertiginous speed with which obsolescence was overtaking international institutions was unparalleled in history and was principally due, as everyone agreed, to the swift and significant scientific and technological advances in the exploitation of the resources of the sea and the sea-bed. But that was not the only reason. The new law of the sea now in preparation was one more indication that the third world had ceased to be the passive object of international relations, and had now be-

come an active participant. The concept of an economic zone of up to 200 miles in breadth, which would doubtless form the nucleus of the future law of the sea, was a natural consequence or corollary of the development philosophy, which reinforced the ideals and expectations of the third world. The main purpose of the Conference was to establish a new legal order of the sea guaranteeing the utilization and exploitation of the sea and its resources for the benefit of all nations, instead of only a few. The new order should help to modify the existing system of the international distribution of wealth, to overcome underdevelopment and to narrow the gap between the poor countries and those which had everything.

8. The efforts of coastal States to control and reserve for themselves the resources adjacent to their coasts were, in the final instance, merely another facet of the long and difficult struggle they were waging on other fronts to ensure—and sometimes to claim—permanent sovereignty over their natural resources.

9. While it was true that when the major Powers had established the basic principle of the freedom of the seas some three centuries before, they had not done so with the deliberate intention of subjugating or exploiting the smaller Powers, far less those States which did not then exist, it could not be denied that the developing States that now expected to be able to exploit the marine resources off their coasts were frequently prevented from doing so by obstacles and situations which derived from the principle of the freedom of the seas, as traditionally understood, namely, the freedom to exploit the sea's resources unrestrictedly and even abusively without regard for any one, since they were considered to be "ownerless" or *res nullius*. Freedom of fishing had favoured the great Powers at the expense of the small. Thus, because of the increasing consumption of a limited stock of marine products, it was essential to replace the traditional concept by the notion of a responsible freedom of the seas, a freedom to use in moderation, riches which did not belong solely to those States having sufficient power to prevent others from exploiting them.

10. The broadening of jurisdictional zones along coasts had been a reaction to the abuse of the freedom of fishing—an abuse which had acted to the detriment of coastal States with scanty means at their disposal. Fish stocks adjacent to the coasts of coastal States should be reserved for those States in the same way as were the mineral resources of their continental shelves. The fact that the living resources existed in close physical and biological dependence on the coastal environment in itself suggested that they should be regarded as forming part of the natural resources of the coastal State and doubtless explained why a considerable number of States favoured the establishment of economic zones under their exclusive jurisdiction off their coasts.

11. Some States, including a number of Latin American States, had advocated a distance of up to 200 miles as the breadth of the territorial sea with a view to preserving their resources. Mexico, like other States on various continents, considered a 12-mile territorial sea to be adequate, provided that it was indissolubly linked to a zone of exclusive economic jurisdiction up to 200 miles in breadth, measured from the coast, called the patrimonial sea, in which the coastal State should exercise its sovereignty over the resources in that sea, but not over the sea itself. Both of those approaches were, he thought, designed to attain the same basic objective—that of preserving the resources of the sea for the coastal State—although by different institutions and technical means. He was happy to be able to acknowledge the important contribution that the advocates of a 200-mile territorial sea had made over the past 25 years to the development of the law of the sea.

12. Mexico had always been keenly interested in the subject. From the outset of the discussions in the United Nations, it had participated extremely actively in the earlier proceedings which had culminated in the elaboration of the concept of the patri-

monial sea or economic zone. It was proud of having sponsored together with Venezuela, the host country of the Conference, and the Republic of Colombia, the first official proposal on the subject, to be submitted to the preparatory committee of the Conference (A/9021 and Corr. 1 and 3, vol. III, sect. 9).

13. Mexico visualized the patrimonial sea as an area in which the coastal State exercised its sovereign rights over those living and mineral resources, whether renewable or non-renewable, which were to be found in the water column, the sea-bed or the subsoil thereof, but where it did not exercise sovereign rights over the ocean space itself. Mexico also believed that the coastal State had other important powers in the same area in respect of the prevention of pollution and the regulation of scientific research.

14. Mexico viewed the patrimonial sea as an exclusive, not a preferential, fishing zone. All its living resources were reserved for the nationals of the coastal State, even in cases where the coastal State did not possess the means to exploit them fully. In such cases, the coastal State should grant licences or concessions, for valuable consideration and on reasonable terms, to nationals of other States for any exploitation of the resources it could not undertake itself, thus being the first to benefit economically and at the same time ensuring that those resources did not go to waste. It would, of course, be for the coastal State alone to decide the terms on which such licences were to be granted, stipulating, *inter alia*, the species that could be exploited, the number and nature of the ships to be used, the size of the catch, the port of supply, and the duration of the agreements.

15. The problems arising out of the use of the seas could not be solved merely by laying down rules for what was and was not allowed. International co-operation could play a prominent part. Joint development of the wealth of the patrimonial sea could bring about a new and beneficial kind of co-operative agreement which would take account of the situation of the developing countries and would, for example, provide for employment and technical training of national fishermen, transfer of technology in fishing skills and methods and processing of products in national plants.

16. The coastal State exercised sovereign rights over all the living resources of the patrimonial sea, including any migratory species of fish that were found in that area. However, because of the special conditions of such fishing, regional agreements would be needed to regulate fishing for pelagic species and the distribution of catches throughout the region on an equitable basis among the parties to such agreements. Mexico disagreed with the principle governing distribution in the Inter-American Tropical Tuna Commission, which operated in the Pacific Ocean, and it would ask for the agreement to be renegotiated at the appropriate time and place, when the Conference was over.

17. The prevention of pollution in the patrimonial sea was of vital importance for the coastal State. Obviously, uniform measures were necessary and that meant international action; but the coastal State, too, had a decisive role, both in implementing international directives and in promulgating supplementary legislation, when the intensity of navigation, the configuration and conditions of the coast and other special factors made it necessary.

18. Scientific research in the patrimonial sea should be regulated by the coastal State. Normally the coastal State should not raise any objection to such research, provided its own scientists participated in all phases of it, the results were published, and the research was carried out for purely scientific purposes and not with a view to prospecting for resources, because oceanographic research was of concern to the whole of mankind. However, the establishment of artificial islands, depots or any kind of installation on the surface of the patrimonial sea, in the water column or in the soil or subsoil, should be subject to the discretionary authority of the coastal State.

19. An essential factor in the concept of the patrimonial sea was that ships and aircraft of all States had, as stated in the joint proposal of Colombia, Mexico and Venezuela, the right of freedom of navigation and overflight with no restrictions other than those resulting from the exercise by the coastal State of its rights within the area. The same rights existed concerning the laying of submarine pipelines and cables.

20. The rights of the coastal State in the patrimonial sea were coexistent with those of the international community and the coastal State should not be able to impose arbitrary or unreasonable restrictions on the activities of other States. Mexico had indicated what in its view should be the confines of coastal State action. It agreed, of course, that the coastal State had duties in that area, in particular to protect and safeguard activities of essential international public concern, such as navigation, and conservation of the sea's living resources.

21. Nevertheless, Mexico could not accept any subordination or dilution of the notion of the patrimonial sea that would turn it into a kind of international zone with a few isolated exceptions in favour of the coastal State. It would oppose any attempt to reduce it merely to a preferential fishing area in which the great fishing Powers could continue to exploit the resources of the seas adjacent to the coast for their sole benefit, as they had in the past.

22. The patrimonial sea was a new, special, legal concept which reflected the complexity of the new conditions in the sea. It could not be absorbed into any of the traditional categories of sea law: it was not the territorial sea and it was not the high sea. In implementing the regulations of the new law of the sea, it was obvious that certain basic principles of general international law—such as the principles concerning abuse of the law, of international public order and of good faith in the fulfilment of international obligations—would be of vital importance as additional means of interpreting the new regulations.

23. He recalled that when the 1958 Convention on the Continental Shelf<sup>1</sup> had come into force, Mexico had amended its Constitution to include the shelf as an integral part of its national territory. It could not therefore accept that the rights it exercised over the whole of its continental shelf, under existing law, should be adversely affected by any new provisions which might emerge from the Conference. It believed that the coastal State should exercise sovereign rights over the shelf as far as the outer limit of the continental margin, or up to a distance of 200 miles from the coast, according to its choice.

24. When considering the various problems concerning the new law of the sea, Mexico kept in mind the situation of the land-locked countries, which were rightly demanding free and effective access to the sea and certain rights over the living resources of the economic zones of the neighbouring coastal States. That position seemed entirely justified. As a Latin American country Mexico naturally sympathized with the just aspirations of its sister republics, Bolivia and Paraguay. Every effort must be made to correct the injustices due to geographical accident by applying the principles of equity. At the same time, Mexico wished to reaffirm its support for Panama's legitimate claim to resume the exercise of its full sovereignty over the whole of its territory.

25. Mexico was concerned about the situation of certain Caribbean States, whose problems would not be solved by the establishment of patrimonial seas. He reaffirmed the need to take into account their just aspirations and to make provision in the convention for regional or subregional agreements which would guarantee the nationals of those States the right to exploit the living resources of the region. Mexico was ready to start negotiations to that end whenever the States concerned so desired.

26. The revolutionary principle of the common heritage of mankind, proclaimed by the United Nations in 1970, called for

serious reflection and support. For the first time mankind had decided to establish a considered, rational plan for the exploitation and equal sharing of the vast resources of the planet earth. For the first time, the States were consciously moving away from the traditional pattern of conquest, occupation or discovery as a means of acquiring sovereignty, which as everyone knew had been the basis of the colonial system and the domination of some nations by others.

27. The principle of the common heritage of mankind meant implicit recognition, probably for the first time also—at least in an official instrument of such importance—of the existence of an international community that was not just the sum-total of the nations of the world, but an entity able to achieve a legal personality, a patrimony of its own, and to exact compensation for damage done to the common property of mankind. That concept was rich in possibilities for a better common international life. That was why it was so tremendously important for the principle of the common heritage of mankind to be translated into a practical reality.

28. Four years had gone by since then, and Mexico had to admit that it was greatly disappointed to note the attitude which some countries had adopted towards that principle. A common heritage meant a common undertaking, a co-operative effort for the benefit of all. Instead of such joint exploitation of assets belonging to all, the great industrial Powers were contending that an Authority, in whose principal organ some States would have more decision-making power than others, would confine itself simply to granting exploitation concessions and licences. The granting of concessions to States and, worse still, to private and probably transnational firms for the exploitation of the sea-bed meant that a few countries would divide up and occupy vast submerged territories, thus giving rise to a new form of colonialism benefiting the technologically and financially more advanced countries and converting what was supposed to be a common heritage into the lucrative enterprise of a few.

29. Mexico thus agreed fully with the idea of establishing a vigorous world-wide Authority which, as the President of Venezuela had said at the 14th meeting of the Conference, must have sufficient economic and technological power to administer the riches of the open sea directly and firmly and to share them among all peoples, since, as the President had added, that would be an extraordinary step based on the soundest social justice.

30. The establishment of a sea-bed régime was a challenge to the good faith and sincerity of the large industrial Powers. Those Powers were demanding that the coastal State should follow international rules, in seas near its coasts, but on the other hand they were insisting that the common heritage of all nations should be exploited not internationally, but individually by a few States. Collective exploitation and management of the means of production played an essential part in the political philosophy and economic and social organization of the socialist countries. Mexico therefore did not understand why those countries had not straightforwardly and clearly supported the idea of a common heritage of mankind, administered collectively by an Authority which represented the community of nations; rather they seemed to prefer its exploitation through the granting of individual concessions, which amounted to a form of characteristically capitalist management.

31. Such attitudes, which were paradoxical if not contradictory, perhaps explained to some extent the wariness with which many developing countries looked upon the implementation of the common heritage principle. Not a few of them doubted that exploitation of those common assets would in the end benefit them in a real and significant fashion.

32. The old principle of freedom of the seas and its corollary, freedom of fishing, was, as he had said, based on the idea that the living resources of the sea belonged to no one. Under

<sup>1</sup>United Nations, *Treaty Series*, vol. 499, p. 312.

present conditions, and still more so in the future, it was simply inadmissible that an essential food reserve of mankind should be conceived of as belonging to no one, and exploited as such. That view had been characteristic of a rudimentary system of rules which was appropriate only in a situation of great abundance and scarce demand, as had been the case in the past with sea resources. Those same premises, i.e., the practically unlimited character of the sea and the impossibility of grasping it, like air, which Grotius had had in mind as a basis for his theory of the freedom of the seas, had ceased to be sound. Today, the resources of the sea, whether renewable or non-renewable, the open sea, the sea-bed, and the subsoil beyond the limits of national jurisdiction must all be considered as *res communis*, as assets which belonged to all nations rather than to no one.

33. Man's whole attitude towards the sea would have to change. Until the present he had used it freely and wastefully, without concern for its management and almost without concern for preserving its living resources. Such an attitude was no longer allowable under present conditions. Other factors which imposed the necessity of regulating the uses of the sea globally, and administering them internationally, were: the dramatic increase in world population and the consequent increase in the demand for foods originating in the sea; growing industrialization on all continents; the concentration of population in coastal areas; the ever-increasing extraction of oil from continental shelves; the increase in navigation and the ever more frequent use of giant tankers, liquid gas tankers, and nuclear vessels; and the growing use of chemical substances, large amounts of which ended up in the sea. Every day new and greater conflicts between the various competing uses of the oceans would arise, conflicts which, of course, no country could cope with alone.

34. Moreover, there was a constant interaction between the many uses of the seas. Exploitation of the resources of the sea-bed could affect the use of the superjacent waters, and vice versa. Activities in international and in national coastal areas likewise affected each other—the sea as a whole, together with the atmosphere above it, formed an ecological system. All such interactions required global and integrated perspectives and action with regard to the marine environment.

35. Mexico was fully aware of the obstacles and difficulties which stood in the way. There were powerful vested interests. The great Powers did not seem to be ready to give international

bodies the powers necessary for the proper management of the oceans for the benefit of all countries. The day would inevitably come when those powers would have to be granted and the process should be begun as soon as possible. In any case, the present Conference was a propitious occasion to plant the seed of an idea which would germinate later.

36. Although he spoke only on behalf of Mexico, he felt deep solidarity with those countries which had got the worst of economic relations among nations in the past and which were now fighting boldly to overcome under-development. The law of the sea formulated by the Conference could be a powerful instrument which would enable the third world to achieve permanent and effective sovereignty over all its natural resources, and which indirectly would make for a more democratic and juster international division of labour.

37. It was the purpose of the charter of economic rights and duties of States, being prepared by a working group of the United Nations, to enunciate principles encouraging more equitable economic relations among States. The recent session of that group in Mexico City had shown the difficulties encountered in establishing international legal rules applicable to a community of nations as heterogeneous and as inequitably organized as the present one. The violent and at times irreconcilable conflicts between the interests of various groups of countries, and the dynamism and fluidity of present-day international society had been obstacles which at times had appeared almost insuperable.

38. But everyone must have faith in the future and in the value and efficacy of ideas. Without that double act of faith, the backward countries would sink into despondency.

39. He hoped that the Conference would be successful and would reach an agreement on the basic principles for a new law of the sea. He trusted that Venezuela's efforts would be rewarded with concrete results which would receive broad support from the countries assembled at the Conference. Lastly, he hoped, that reason would triumph at the Conference. Mexico would lend its best efforts to that lofty common task.

40. The PRESIDENT, speaking on behalf of the Conference, thanked His Excellency the President of Mexico for his extremely important statement.

*The meeting rose at 11.10 a.m.*

## 46th meeting

Monday, 29 July 1974, at 10.20 a.m.

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

### Progress of work: statements by the Chairmen of the Main Committees

1. Mr. ENGO (United Republic of Cameroon) said that the First Committee expected to complete the first phase of its work—the removal of the square brackets, alternative texts and repetitions—by the end of the week. The Committee had not yet succeeded in producing the texts and alternatives that had been hoped for; it was therefore not yet possible to begin direct negotiations. Nevertheless, work on the first 23 articles would be completed very shortly. The officers of the Committee had been trying to ascertain the extent to which opinions differed on the question of the final negotiations. The main problem was the political and economic consequences of sea-bed exploitation.

2. The Committee had heard the views of the United Nations Conference on Trade and Development on the economic consequences of sea-bed exploitation; the representative of a highly industrialized country had subsequently stated that he could not accept the conclusions of the Conference, or the premises on which they were based. The officers of the Committee had considered it appropriate, in order to make the work of the Committee more productive, to begin preliminary discussions to enable the developed countries to present their case and to allow the Committee to consider the technical and political aspects of the problem. The proposed procedure appeared to enjoy general support. He hoped that the discussions would make it possible to take political decisions on the question of exploitation.

3. The informal working group of the whole would present its preliminary report to the Main Committee the following day.