Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/77

Letter dated 24 April 1979 from the Chairman of the Group of 77 to the President of the Conference

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XI (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Eighth Session)*

natives in the text would be disastrous and the failure of the Conference would be assured.

In the light of the foregoing, it would be wholly illegitimate to alter the situation in respect of Jamaica's name in the informal composite negotiating text, and the group of Latin American States opposes any such move.

DOCUMENT A/CONF.62/75

Letter dated 23 April 1979 from the Chairman of the group of Arab States to the President of the Conference

[Original: English]
[23 April 1979]

As Chairman of the group of Arab States to the Third United Nations Conference on the Law of the Sea, I wish to reiterate to you the decision taken by the League of Arab States which endorsed the candidature of Malta for the seat of the International Sea-Bed Authority.

Since Malta and Fiji are also candidates for that seat, the group of Arab States considers it unfair to insert Jamaica in article 154, paragraph 3, of the informal composite negotiating text,[1] while mentioning the other two candidates in a foot-note.

I request, therefore, that the three candidates, namely, Malta, Jamaica and Fiji, be accorded equal treatment in any article relating to the said seat in the revised text you envisage to issue at the end of the current session.

I request that this letter be issued as an official document of the Conference.

(Signed) A. HUMAIDAN (United Arab Emirates)
Chairman of the group of Arab States
to the Third United Nations Conference
on the Law of the Sea

DOCUMENT A/CONF.62/76

Letter dated 25 April 1979 from the Chairman of the group of Western European and other States to the President of the Conference

[Original: English]
[25 April 1979]

At a meeting today of the group of Western European and other States to the Third United Nations Conference on the Law of the Sea the group discussed the provisions of article 154, paragraph 3, of the informal composite negotiating text[1] with regard to the seat of the future International Sea-Bed Authority. The group has asked me, in my capacity as its Chairman, to convey to you its opinion that all candidatures for the seat should be placed on an equal footing with each other. Preferably, no mention should be made of any candidate in article 154, paragraph 3. This should be reflected in any revised Conference text.

It is requested that this letter be circulated as an official document of the Conference.

(Signed) N. R. LARSSON (Sweden)
Chairman of the group of Western European and other States
to the Third United Nations Conference
on the Law of the Sea

DOCUMENT A/CONF.62/77

Letter dated 24 April 1979 from the Chairman of the Group of 77 to the President of the Conference

[Original: Spanish]
[25 April 1979]

I have the honour to enclose with this letter the document concerning the question of unilateral legislation which was drawn up by the group of legal experts of the Group of 77 under the chairmanship of Mr. Roberto Herrera Cáceres of Honduras. I would be grateful if you would arrange for it to be circulated as a document of the Conference to the participating States.

The group of legal experts has held various meetings during the present session and will continue its work during the coming months, with the object of contributing to the definition of the legal position of the Group of 77 in defence of the common heritage of mankind.

(Signed) M. CARIAS
Head of the delegation of Honduras
to the Third United Nations Conference
on the Law of the Sea
and Chairman of the Group of 77

LETTER DATED 23 APRIL 1979 FROM THE GROUP OF LEGAL EXPERTS ON THE QUESTION OF UNILATERAL LEGISLATION TO THE CHAIRMAN OF THE GROUP OF 77

In various fora, both regional and world-wide, the Group of 77 has repeatedly declared its clear legal conviction concerning the binding nature of the principles set out in resolution 2749 (XXV) of 17 December 1970 and its position regarding the unilateral initiatives and proposals of a small group of States which are seeking to explore and exploit the resources of the area by means of so-called "provisional or transitional" measures.

For this reason, and in order once again to express these convictions in the most precise form possible, it was decided to establish a group of legal experts composed of 12 jurists from all regions of the developing world, including members of the International Law Commission. The members of this group are:

Chairman: MR. R. HERRERA CÁCERES (Honduras), Ambassador to Belgium, the Netherlands and the European Economic Community.

Members: MR. M. BENCHEIKH (Algeria), Professor of Law; MR. M. BENNOUNA (Morocco), Dean of the Faculty of Law, Rabat; MR. J. CASTAÑEDA (Mexico), Ambassador, member of the International Law Commission; MR. S. P. JAGOTA (India), Ambassador, Under-Secretary and Legal Adviser to the Ministry of Foreign Affairs, member of the International Law Commission; MR. J. C. LUPINACCI (Uruguay), Under-Secretary, Ministry of Foreign Affairs; MR. B. NDIAYE (Senegal), Professor of Law, University of Dakar; MR. F. X. NJENGA (Kenya), Under-Secretary, member of the International Law Commission; MR. C. PINTO (Sri Lanka), Ambassador to the Federal Republic of Germany, member of the International Law Commission; MR. K. RATTRAY (Jamaica), Ambassador, Solicitor General, Attorney-General's Chambers; MR. S. SUCHARIKTUL (Thailand), Director General, Treaty and Legal Department, Ministry of Foreign Affairs, member of the International Law Commission; MR. M. YASSEEN (United Arab Emirates), Counsellor, Permanent Mission at Geneva.

The group of legal experts has worked throughout the present session and will continue to work in defence of the common heritage of mankind.

The group of legal experts has noted the following basic points:

1. *Development of the international law of the sea*

Neither the Convention on the High Seas, signed in 1958,[3] nor general international law includes among the freedoms of the high seas the exploration and exploitation of the mineral resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction.

According to Malta's proposal of 1967 envisaging a declaration and a treaty designed to reserve exclusively for peaceful purposes the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction and the use of their resources to the benefit of mankind, this area was to be declared the common heritage of mankind, the exploration and exploitation of which would be to the benefit of mankind as a whole, with special regard for the need to promote the economic development of the developing countries, on a basis of true equality.

In its resolutions 2340 (XXII) of 18 December 1967 and 2467 (XXIII) of 21 December 1968, the General Assembly continued to define this concept, by then with the general consensus. It was decided, therefore, to establish an *ad hoc* committee, and later the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction, one of whose special functions was to study the elaboration of the legal principles and norms which would promote international co-operation in the exploration and use of the area and ensure the exploitation of its resources for the benefit of mankind. In one of these resolutions, the Assembly expressed its conviction that the exploitation of the area should be carried out under an international régime including appropriate machinery, considering that, pending the establishment of such a régime, States and persons, natural or juridical, were bound to refrain from any activities involving exploitation of the area's resources.

By resolution 2574 (XXIV) of 15 December 1969, the General Assembly requested the Secretary-General of the United Nations to conduct the necessary consultations with a view to convening a conference on the law of the sea to review the régimes of the high seas, the continental shelf and other areas, particularly in order to arrive at a clear, precise and internationally accepted definition of the area of the sea-bed and ocean floor and the subsoil thereof lying beyond the limits of national jurisdiction, in the light of the international régime to be established for that area. The same resolution also provides that States and all persons are bound to refrain from all activities of exploitation of the resources of the area pending the establishment of an international régime, including appropriate international machinery. This provision was reiterated, *inter alia*, by the United Nations Conference on Trade and Development in its resolution 52 (III) of 19 May 1972.

In its resolution 2749 (XXV) of 17 December 1970 entitled "Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction" the General Assembly incorporated the mandatory principles which basically regulate activities in the area.

By resolution 2750 (XXV) of 17 December 1970 and subsequent resolutions, the General Assembly decided to convene and hold a conference on the law of the sea which would deal with the establishment of an equitable international régime—including international machinery—for the area and its resources, and a precise definition of that area and other interrelated issues.

Consequently, the Third United Nations Conference on the Law of the Sea was convened and is still in progress, now being in its eighth session; the broad consensus on the legal principles underlying the régime being negotiated for the exploration and exploitation of the area, as reiterated in part XI (the Area) of the informal composite negotiating text,[1] is once again evident.

2. *The binding nature of the fundamental principles governing the area*

The principles set out in the Declaration contained in resolution 2749 (XXV) are legally binding principles which were proclaimed in this Declaration and upheld by the affirmative vote of 108 States. It should be added that a number of the few States (14) which abstained on that occasion, although without formulating any objection, subsequently expressed, either explicitly or implicitly, their support for those principles, as did other States members of the international community, thus recognizing by their attitude the force of international custom as expressed in resolution 2749 (XXV).

This custom has given rise to new general principles of public international law which are the basis or legal foundation of any substantive norms regulating the exploration of the area of the sea-bed and the ocean floor and the subsoil thereof and the exploitation of their resources.

3. *Normative relationship of the principles applicable to the area*

The principle that the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction and the

[3] United Nations, *Treaty Series*, vol. 450, No. 6465, p. 82.

resources of the area are the heritage of mankind, and the complementary principles according to which the area is incapable of being appropriated, the need for an international régime including international machinery which would guarantee the activities carried on in the area for the benefit of all mankind and not only for that of some States, its peaceful use and other principles contained in the Declaration—all these form a normative unity that is indivisible and applicable to the area. This normative unity consolidates the applicable principles laid down in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.[4]

4. *Legal status of the area*

The customary principle of the freedom of the high seas is not an absolute principle; it does not apply to the exploitation of the sea-bed and ocean floors beyond national jurisdiction, because the exploitation thereof was beyond the capacity of States at the time when that principle came into being.

But even on the assumption that this customary principle would be applicable to this exploitation, it would certainly have ceased to be applicable in consequence of the Declaration of Principles of 1970, not only because the Declaration is a resolution adopted by the General Assembly but also because it is an event reflecting a conviction incompatible with *opinio juris sive necessitatis* indispensable to the operation of the principle as an international custom in the exploitation of the sea-bed or ocean floor beyond national jurisdiction.

There is an obvious difference in legal status as regards the superjacent waters of the area and as regards the sea-bed, subsoil and resources of the area.

Whereas the legal status of the superjacent waters is that of *res communis*, the legal status of the sea-bed, subsoil and resources thereof is that of an indivisible and inalienable common heritage of mankind, to be explored and exploited for the benefit of mankind as a whole through the equitable participation of the States in the benefits to be derived therefrom, with special regard for the interests and needs of the developing countries, whether coastal or land-locked countries. The foregoing proposition is reaffirmed by the principles affirming that the area cannot be appropriated, that acquired rights cannot be allowed with respect to it and that States are responsible for activities in the area that are harmful to all mankind and to its equitable participation in the economic benefits derived from the exploitation of the area.

5. *The legal principles applicable to the area and unilateral acts or limited agreements for its exploration and exploitation*

The principles of law laid down in resolution 2749 (XXV) form the basis of any international régime applicable to the area and its resources.

All activities connected with the exploration and exploitation of the area and other related activities will be governed by the international régime to be established by the conclusion of an international treaty that is generally acceptable and includes appropriate international machinery for implementing the principles of law referred to.

Consequently, any unilateral act or mini-treaty is unlawful in that it violates these principles, for the legal régime, whether provisional or definitive, can only be established with the consent of the international community as the sole representative of mankind and in conformity with the system determined by the international community.

The adoption of unilateral measures, draft legislation and limited agreements would merely be an event without international legal effect and hence incapable of being invoked vis-à-vis the international community.

The great majority of States would not admit the validity of such legislation, nor could such legislation constitute valid grounds for any juridical claim to explore or exploit the area. Furthermore, if such unilateral legislation or mini-treaty should be put into operation, the international responsibility of the States concerned would be engaged in respect of damage caused by such activities incompatible with the principles applicable in the area.

It should be stressed that no investor would have any legal guarantee for his investments in such activities, for he would likewise be subject to individual or collective action by the other States in defence of the common heritage of mankind, and no purported diplomatic protection would carry any legal weight whatsoever.

6. *Rule of law*

It is a function of international law to avoid the possibility that, through relationships of strength, a State might endeavour to settle by force what cannot be settled by means of the law. This can happen in cases where a claim is made subsequently to repudiate a rule that was accepted when it was formulated.

More than 119 States have reaffirmed their constant support for the respect of customary international law as the basis for the general principles of law that fundamentally apply in the area declared as the common heritage of mankind, and their support for the principles and rules referred to above. This largely representative body of mankind should not be ignored by any one State or by a small number of States purporting to claim a *de facto* authority over all humanity.

The binding legal nature of the applicable principles and rules of international law, including those laid down in the Charter of the United Nations and those proclaimed in the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations adopted by the General Assembly on 24 October 1970, emphasize the duty and the interest of maintaining international peace and security and promoting co-operation and mutual understanding among nations. Special emphasis should be given to the duty to perform fully and in good faith the obligations entered into by States by virtue of the generally recognized principles and rules of international law.

The conclusion of a mini-treaty or the adoption of unilateral legislation and any attempt to carry them into effect would likewise be inconsistent with the principles of good faith in the conduct of negotiations at international plenipotentiary conferences like the Third United Nations Conference on the Law of the Sea, which has been engaged since 1973 in efforts to work out a treaty on the exploration and exploitation of the sea-bed and its resources on the basis of the principles laid down in resolution 2749 (XXV) and in the resolutions convening the sessions of these Conferences. Accordingly, it should be the objective of all States that constitute humanity to ensure that the Third Conference on the Law of the Sea achieves a satisfactory result as soon as possible.

(Signed) R. HERRERA CÁCERES (Honduras)
Chairman of the group of legal experts

[4]General Assembly resolution 2625 (XXV).