

Third United Nations Conference on the Law of the Sea

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Summary records of meetings of the Second Committee 21st meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume II (Summary Records of Meetings of the First, Second and Third Committees, Second Session)*

21st meeting

Wednesday, 31 July 1974, at 12.45 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Exclusive economic zone beyond the territorial sea

[Agenda item 6]

1. Mr. TEMPLETON (New Zealand) said that his country had for some years firmly supported the economic zone concept, and at the Conference had been among the sponsors of working paper A/CONF.62/L.4, whose pivotal feature was the 200-mile economic zone. The very wide support given to that concept during the Conference clearly assured it of a place in the new convention on the law of the sea. It now remained to find the exact method of safeguarding legitimate competing interests with regard to the zone.

2. New Zealand's support for the economic zone concept was motivated by the same special concern as had been expressed by the South Pacific island States. Such countries looked increasingly to the surrounding ocean as a necessary supplement to their slender land resources, and there was little if any possibility of harming neighbouring countries in view of the remoteness of the island countries of the South Pacific. While the fishing interests of other countries might be affected, the will existed to find a way of dealing with that situation.

3. New Zealand had a relatively generous under-water extension of the land mass, in which there had already been one discovery of natural gas deposits. In view of New Zealand's extreme distance from the great oil-producing regions of the world, the existence of sources of hydrocarbons in the area was of the greatest importance to its young and growing community; the establishment of an economic zone of the kind that was emerging in the Conference would enable New Zealand to protect that interest, as well as to safeguard the vulnerable fish resources of the region from large distant-water fishing fleets. A co-operative zonal régime was needed which would offer more discipline than the traditional freedoms of the high seas.

4. The suggestion had been advanced in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, and repeated by one delegate in a plenary meeting, to the effect that there should be a restriction on the ocean space and, in particular, on the economic zone of islands. The New Zealand delegation assumed that such a suggestion had been made for the most part, in the context of the special delimitation problems affecting islands in enclosed or semi-enclosed seas. If, however, a broader principle had been intended, his delegation had the strongest objection to it. The application of such a principle would doubly penalize the island countries of the Pacific, already inhibited by geographical remoteness and suffering difficulties with resources and marketing, by withdrawing from them the benefits of a proper economic zone. His delegation was also sure that most delegations had serious misgivings about the thought of varying the attributes of State sovereignty with regard either to the territorial sea or the economic zone according to a calculation of the size of a State, its population or other factors. No such discrimination was envisaged in existing international law as contained in the 1958 Geneva Conventions.

5. New Zealand, with other States, had sponsored a set of draft articles contained in document A/CONF.62/C.2/L.30 which preserved the entitlement of island States and islands generally to the same territorial sea and economic zone to be fixed for other land territory. It was essential that no doubt should be cast on the principle of equitable treatment of all types of land territory.

6. No solution ensuring the general acceptance of the economic zone would come from the Conference unless each delegation aimed at a reconciliation of all major viewpoints, whether or not they affected its own circumstances. With regard to the concept of the economic zone, there were four major areas where compromise seemed possible.

7. First and foremost, the interests of the land-locked and shelf-locked countries, especially those with developing status, deserved most serious consideration in relation to economic zones. While not every aspect of that group's wishes could conveniently be met, New Zealand and the other sponsors of working paper A/CONF.62/L.4 had committed themselves to producing draft articles recognizing the requirement for equitable rights of access by disadvantaged developing States to the living resources of the economic zones of neighbouring countries.

8. Secondly, there was a wide divergence of interests and viewpoints in regard to the areas of continental margin which lay beyond the 200-mile economic zone. New Zealand had a very large continental margin, much of which was already under licence to companies to search for and to exploit natural gas, oil and other mineral resources. In the view of the New Zealand delegation, the existing law set out in the 1958 Geneva Convention on the Continental Shelf¹ and confirmed by the International Court of Justice,² and the practice of States, granted a coastal State sovereign rights over sea-bed resources throughout the natural prolongation of its land territory, that is, over the whole of the margin. In view of New Zealand's remoteness and isolation in the vast ocean, it was not unreasonable to ask that the new law of the sea confirm the existing rights of the coastal State to its continental margin. New Zealand would, however, look with sympathetic interest at any concrete proposals that might be put forward for the accommodation of the interests of States not in that position.

9. Thirdly, the needs of distant-water fishing countries and of other States interested in fishing in the economic zones of a particular region should be taken into account, and New Zealand was ready to offer concessions in that regard as was evident from the notes in working paper A/CONF.62/L.4. The joint Australian-New Zealand fisheries paper submitted to the sea-bed Committee in 1972³ would also provide a general régime for fisheries in economic zones under which that portion of the allowable catch not taken by the coastal State would be available for the fishing vessels of third countries. The sponsors were revising that paper into draft articles for possible presentation under the item on fisheries. Most of the major distant-water fishing countries now seemed willing to come to terms with the idea of the 200-mile zone in which fish stocks would be managed, conserved and harvested by the coastal State. Similarly, most coastal States also seemed willing now to accept the obligation to allow fishermen from other countries to enter the 200-mile zone on reasonable terms and conditions to take the balance of the allowable catch not harvested by the local industry.

10. Fourthly, agreement on the economic zone would not be possible unless adequate provision was made to ensure that, as

¹ United Nations, *Treaty Series*, vol. 499, p. 312.

² See *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3.

³ *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 and corrigendum, annex III, sect. 9.*

envisaged in the Declaration of the Organization of African Unity adopted at Addis Ababa in 1973 and at Mogadiscio in 1974 (A/CONF.62/33), the rights to an economic zone would not be used for the exploitation of those territories still remaining under colonial or foreign domination. Not much progress had been made so far in translating that worth-while idea into exact treaty language. It was, of course, difficult to do so without running the risk of affecting the rights of territories which did not in fact fall into the particular category in question. A formula could be found, however, to ensure that, in respect of a territory which had neither full independence nor some other self-governing status, achieved after an act of self-determination under the auspices of the United Nations, the

rights to the resources of an economic zone created in respect of that territory and to its continental shelf were vested in the inhabitants of the territory, to be exercised by them for their benefit and in accordance with their needs and requirements. It should also be made clear that such rights could not be exercised, profited from or in any way infringed by a metropolitan or foreign power administering or occupying such a territory. The New Zealand delegation, together with Fiji, Tonga, and Western Samoa, had accordingly submitted a draft article on that subject in document A/CONF.62/C.2/L.30, which might best be considered under agenda item 19, on the régime of islands.

The meeting rose at 1.00 p.m.

22nd meeting

Wednesday, 31 July 1974, at 3.10 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Continental shelf (concluded)*

[Agenda item 5]

1. Mr. AL-NIMER (Bahrain) outlined the historical background of the concept of the continental shelf. In particular, he referred to the text of the draft articles adopted by the International Law Commission in 1956¹ which had laid the ground for the definition of continental shelf areas subject to the control and jurisdiction of coastal States contained in article I of the 1958 Geneva Convention on the Continental Shelf,² and subsequently confirmed by the judgment of the International Court of Justice on the North Sea cases.³ In a Government proclamation of 5 June 1949, his country had declared that the sea-bed and subsoil beneath the high seas contiguous to its territorial waters, and extending seaward to boundaries which had subsequently been agreed with neighbouring States, belonged to Bahrain and were subject to its absolute jurisdiction and authority. The proclamation expressly provided that the high seas character of the superjacent waters outside the territorial belt and the fishing and other traditional rights in such waters would not be affected.

2. His delegation supported retention of the doctrine of the continental shelf and the exercise of the rights specified therein, as defined in bilateral agreements or in accordance with the principles laid down in the 1958 Geneva Convention. The doctrine of the economic zone, if eventually adopted, should not affect continental shelf rights since it was a subsequent formulation of additional coastal State rights over the living resources of superjacent waters. The application of the economic zone doctrine in geographically disadvantaged areas and semi-enclosed seas would lead to difficulties of distribution which could probably be settled only by regional agreements based on equitable principles.

Exclusive economic zone beyond the territorial sea

(continued)

[Agenda item 6]

3. Mr. HERRERA CACERES (Honduras) said that his country claimed inherent rights over the resources in its adjacent zones and had established control over hunting, fishing and other exploitation in those waters. Foreign States had no

competence in those zones except on the basis of agreement with the coastal State. His country maintained the principle that the outer limit of the territorial sea had never constituted a limit on the inherent right of States over their resources. Free and unimpeded activities in the adjacent zones were a conventional rather than a customary freedom, which was binding only on States parties to a treaty relating to those zones.

4. Honduras was not a party to any treaty which would have limited its rights over the resources of its adjacent zone. It was prepared to negotiate on the understanding that any limit it accepted in connexion with that zone would be a freely conceded restriction on its rights and not a concession enjoyed by a group of States that took advantage of a conventional freedom to fish in order to plunder the seas. His delegation considered that the resources of the sea-bed and ocean floor and those of the superjacent waters should be covered by the same régime, without prejudice to the competence of the coastal State with regard to the continental shelf and the regulation of high seas fishing.

5. The concept of a contiguous zone should disappear on establishment of an exclusive economic zone beyond the territorial sea, except in the case of States with a territorial sea of less than 12 miles. However, his delegation strongly disagreed with the view that the disappearance of the concept of the contiguous zone entailed the disappearance of certain traditionally related competences which were complementary to the competence of States in the economic zone. The economic zone and the contiguous zone coincided in the sense that they were subject to the functional competences of the coastal State. In the economic zone those functions related to resources, while in the contiguous zone they related to customs, fiscal, sanitation and immigration police. Some of those functions should be redefined in the light of the rights to be protected in the exclusive economic zone and should be integrated in the sovereign competence of the coastal State as regards fisheries control, protection of the marine environment, control of scientific research and national security.

6. For practical purposes, competence on sanitation matters need not be taken into account in the exclusive economic zone. However, it was necessary to define the scope of the security measures which a State might adopt. The issue had been discussed at other conferences and should be defined in the convention being negotiated, particularly with regard to protection of the coastal State from threats to its inherent rights over resources. Provisions should be included to ensure that free-

*Resumed from the 20th meeting.

¹ *Official Records of the General Assembly, Eleventh Session, Supplement No. 9, para. 33.*

² United Nations, *Treaty Series*, vol. 499, p. 312.

³ *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 3*