

# **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/C.2/SR.29**

## **Summary records of meetings of the Second Committee 29<sup>th</sup> 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)*

## 29th meeting

Tuesday, 6 August 1974, at 3.15 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

### Exclusive economic zone beyond the territorial sea (concluded)

[Agenda item 6]

1. U KYAW MIN (Burma) said that political, economic and technological developments since the Second World War had introduced certain qualitative changes in the traditional law of the sea which could be described as resource-prompted and resource-oriented. The traditional law of the sea based on the doctrine of freedom of the seas had resulted in a régime of *laissez-faire* over the natural resources of the oceans beyond the territorial sea which had benefited only those capable of exploiting them at the expense of the overwhelming majority of countries. That régime had become outdated and should be replaced by a new legal system under which each and every State would be entitled to its rightful share of ocean resources.

2. To that end it was necessary to establish clearly defined legal rights of resource ownership in clearly demarcated areas of ocean space. That was precisely the aim of the exclusive economic zone concept and the complementary concept of the common heritage of mankind; one would establish in a zone adjacent to the territorial sea a régime of sole coastal State ownership and jurisdiction primarily over resources, and the other a régime of collective ownership and jurisdiction in the area seaward of that zone. In the view of his delegation a future convention should preserve the essential distinction between those two concepts in order adequately to meet the divergent needs and interests of States. To blur that distinction, let alone destroy it, would undermine the very basis of the convention and thus jeopardize its viability.

3. Certain proposals, such as those calling for preferential rights only for coastal States in their economic zones, legalization of what their proponents described as traditional fishing rights but which were essentially prescriptive rights, and as such should have no place in modern international law, compensatory rights, compulsory sharing of revenues or the designation of the sea-bed resources of a continent as the common property of that continent, constituted an attempt to graft the concept of the common heritage of mankind on to the concept of the exclusive economic zone. The adoption of any of those proposals would create legal confusion in the seas and sow the seeds of conflict between States. It could also have dangerous consequences for coastal States, particularly those lacking the physical power to defend their rights.

4. The essential principle of the exclusive economic zone, namely, exclusive coastal State sovereignty over the resources of maritime zones adjacent to its coast, was not new to international maritime law. It was clearly inherent in the concept of the territorial sea and explicitly sanctioned under the Convention on the Continental Shelf.<sup>1</sup> It was that essential principle which would be seriously undermined if any of the proposals in question were adopted. A great deal had been said about the so-called process of creeping jurisdiction, but the possibility of that process working in reverse was seldom mentioned. Bearing that possibility in mind, his delegation firmly believed that the rights and powers of the coastal State in the exclusive economic zone should be upheld in law as supreme.

5. His delegation shared the view that the economic zone should extend to an outer limit of 200 nautical miles measured from territorial sea baselines and that within that limit, the

coastal State should have exclusive sovereign rights over all living and mineral resources. Those rights should be coupled with exclusive regulatory, control and management powers over resource conservation, protection of the environment and scientific research. The provisions of the régime of the continental shelf, which represented a higher régime than those envisaged for the patrimonial sea and the economic zone, should be made applicable to the subjacent sea-bed of the zone regardless of depth and to that part of the continental margin extending beyond the outer limit of the zone.

6. His delegation was sympathetic to the requirements of those States whose economies were largely dependent on sea fisheries and was aware of the need to ensure optimum utilization of fishery resources in the economic zone. However, it considered that coastal States should have the legal right of decision with regard to practical arrangements in respect of those matters.

7. Referring to the delimitation of the boundaries of exclusive economic zones between States, he expressed the view that equidistance boundaries were by definition arbitrary and did not take account of the physical features of the sea-bed. Recalling his statement on the continental shelf at the 18th meeting, he said that in situations where the application of the equidistance rule would result in the economic zone of one State overlapping the natural prolongation of another State, the natural prolongation principle should be determinant for the purpose of delimiting the sea-bed boundary. Moreover, in such situations the epi-continental sea concept might be applied to determine the boundaries of the water column in order to ensure that the jurisdictional boundary of the sea-bed coincided with that of the water column, thereby obviating disputes, particularly over the ownership of bottom fish.

8. His delegation strongly supported in principle proposals aimed at establishing objective criteria whereby small oceanic islands and island groups would not be entitled to claim disproportionately large areas of resource jurisdiction to the detriment of the rights and interests of neighbouring States. It also supported the view that isolated islands and outlying islets should not qualify as base points in determining the breadth of the exclusive economic zone and the jurisdictional boundaries between States. His remarks did not apply to archipelagic or island States and were not intended to prejudice the rights of those States in any way.

9. Mr. LAPOINTE (Canada) said he wished to reply to those delegations which had expressed doubts and fears concerning the possible effect of the exclusive economic zone on the delicate balance which should be maintained between coastal States and the users of the ocean.

10. The head of his delegation had outlined his country's position on the concept of the economic zone at the 46th plenary meeting, when document A/CONF.62/L.4 was tabled. As defined in that document, the economic zone was not an international zone within which the coastal State was allocated certain privileges. It was the zone of national jurisdiction where the acquired rights of the coastal State over the mineral resources of the continental shelf, and, so far as possible, certain rights and privileges which vessels had previously enjoyed on the high seas, would be maintained. New rules would be formulated with regard to exclusive coastal State management of the biological resources in the zone and the participation of non-coastal States in the exploitation of those resources.

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

11. The exclusive economic zone was not just a question of resources. It also included the rights and duties of the coastal States to protect the marine environment and control scientific research. It was not merely a matter of bargaining between rights over resources and navigation rights. The coastal State should have the right to utilize and preserve resources adjacent to its coasts since the survival or development of its people depended on those resources and because it was in the best position to regulate their rational exploitation. That necessarily entailed the acquisition of rights to protect those resources with regard to pollution and scientific research. The economic zone further implied that the marine environment of the coastal State and its security should be adequately protected. The rights of the coastal State in the economic zone could not therefore be limited exclusively to resources.

12. The sponsors of document A/CONF.62/L.4 had been criticized for not providing full details of the practical consequences of the concept of the economic zone. With regard to fishing in particular, the working paper had been expected to spell out proposals for a definitive solution of the numerous and complex problems relating to that subject in the future convention on the law of the sea. While the document was not so ambitious, it did imply that the exercise by the coastal State of its sovereign rights in the zone in respect of fishing should not automatically exclude non-coastal States. The waste of biological resources which would result from such an interpretation could not be justified at a time when there was a world shortage of protein. On the other hand, the exclusive character of the economic zone meant that the coastal State would henceforth have a decisive voice with regard to the management of the biological resources in its zone. It could determine the proportion of the catch which it should receive and regulate fishing methods to ensure an adequate level of production and it could allow others to fish in the zone on equitable conditions which would take due account of its interests.

13. The provisions of document A/CONF.62/L.4 did not remove the coastal State's obligation to observe certain management principles with regard to conservation, such as the principle of maximum utilization of resources. They did not prevent coastal States from seeking regional or international assistance in certain technical fields such as the evaluation of stocks. The economic zone was not a zone of residual rights in favour of the coastal State.

14. The only way out of the existing impasse was to engage without delay in genuine negotiations on the practical problems related to the reasonable exercise by the coastal State of its rights and not on the rights themselves, as some delegations were attempting to do in the guise of proposals to establish institutions or multilateral regulations.

15. Mr. ZULETA TORRES (Colombia) expressed his condolences to the people of Bangladesh following the recent flood disaster in that country.

16. He said that the concept of a 200-mile exclusive economic zone, combined with a 12-mile territorial sea, for the purposes of exploring and exploiting the renewable and non-renewable natural resources of the superjacent waters, the sea-bed and subsoil thereof, had received the support of an overwhelming majority of the international community; it could accordingly be considered an irreversible trend in the new law of the sea, since it was the only formula that reconciled the interests of the coastal States with those of the international community.

17. He wished to respond to certain objections and reject certain conditions formulated by a number of developed countries, especially in connexion with the fisheries régime, scientific research and the preservation of the marine environment.

18. With regard to fisheries, it had been stated that the developing countries were not able to utilize the whole—or in some cases even a part—of the available catch, and that a régime should accordingly be established in favour of the de-

veloped countries enabling them either directly or indirectly to indicate to the coastal State its maximum fishing capacity and to require it to permit fishing by foreign vessels. That somewhat paternalistic argument was aimed at making the exclusive economic zone a hollow concept. The fact was that many independent scientific studies had concluded that only the coastal State was in a position to apply the necessary conservation measures and plan the development of ocean species.

19. The developing countries needed to establish and develop their fishing industry, but in order to do so they must be certain that the fishery resources would remain theirs and that the fishing fleets of the big Powers would not deplete fish species by indiscriminate fishing. Only the State that assumed responsibility for fishery development programmes could have the legal capacity to control fishing in its economic zone, especially since none of the major fishing Powers were interested in co-operating in the development of the fishing capacity of the coastal State.

20. Those who argued in favour of preserving the freedom of scientific research—a noble aim, at first sight—overlooked one fundamental fact: within its economic zone, the coastal State must be entitled at least to ascertain the nature of the research and to participate on an equal basis in the results thereof. The developing countries had no wish to hamper research; but neither were they prepared to permit the exploration of their resources and pollution of their waters on the pretext that it was in the interests of science. It was almost an insult to the developing countries—a vestige of the paternalistic mentality of certain great Powers—to attribute to them a whimsical desire to impede the progress of marine sciences.

21. As to the preservation of the marine environment, no State claimed to have absolute control over the pollution of its own waters. A balance must be struck between the right of the coastal State to prevent pollution and the interests of the international community. The future convention must take into account that coastal States had duties as well as rights.

22. His delegation therefore took the view that the provisions of document A/CONF.62/L.4 that related to the economic zone struck a balance between the sovereign rights of the coastal State over its resources and its rights and duties with regard to the preservation of the marine environment and scientific research. Those provisions therefore constituted an acceptable framework for a consensus. However, unless there was a sincere desire to reach agreement, the next session of the Conference would be nothing but an academic exercise.

23. Mr. ARAIM (Iraq) expressed his condolences to the Government and people of Bangladesh following the recent flood disaster in that country.

24. In connexion with the item under discussion, he noted that the stage had been reached where all States must try to accommodate the interests of the international community. At the same time, the interests of land-locked and other geographically disadvantaged States must be provided for in the future convention, since they could not be safeguarded by bilateral or multilateral agreements alone. He was gratified to find a growing tendency to recognize that necessity. In the implementation of that convention, regional arrangements were vital.

25. He considered that document A/CONF.62/C.2/L.39, of which his delegation was among the sponsors, could form a basis for negotiations. He emphasized that the provisions of article 5 of that document did not apply to those States which were unable to extend their economic zone to the limit to be agreed upon in the proposed convention; it therefore did not apply to the geographically disadvantaged States.

26. His delegation hoped that the principles embodied in that document would be taken into consideration in the informal working paper which would set forth the main trends with

regard to the topic under discussion. As in the case of the continental shelf, his delegation took the view that the exploration and exploitation of the living and non-living resources of the economic zone should not affect the freedom of the high seas.

27. Mr. MAIGA (Mali), emphasizing the need for international solidarity to eliminate the growing disparity between the developed countries and those of the third world, said that the concept of the exclusive economic zone—which had the support of the large majority of States—could be considered one means of establishing a new legal order under which the resources of the sea would constitute a new area of co-operation and economic development.

28. The economic zone had been conceived with a view to fostering the development and well-being of the peoples of the world, particularly those of the developing countries, whose resources in the zone adjacent to their territorial sea had been plundered for centuries. The new legal order, based on equity, would eliminate the inequalities of geography between the coastal and the land-locked States, the intention being to transform the land-locked developing countries and other geographically disadvantaged countries into real partners in development. It was logical for those countries to be granted the right to exploit the biological resources of the economic zones of the coastal States—not in a spirit of paternalism, but rather in the conviction that the results would be of benefit to all.

29. For some, the exclusive economic zone was merely a smoke-screen to conceal the extension of the territorial sea, in contravention of the general principles of international law. For others, the economic zone was a simplistic formula that

did not take account of the interests of all States. Without wishing to enter into polemics, his delegation wished to point out to those who held such ideas that international law must be freed from its shackles in order to take account of the political and social realities of the time. In a society that knew no special privileges, the law of the sea must undergo a revolution rather than an evolution. The domination of the big Powers over the sea, designed to preserve their economic, political and military interests, must be replaced by a new order in which the sea would become an instrument for peace, justice and the welfare of the economically less advanced countries. Existing rules and principles that accentuated the gap between the developed and developing countries must be abolished. Such a revolution was interpreted by some as detrimental to their rights; but the task of the Conference was to formulate a law acceptable to all.

30. Stressing the continuing need to reconcile divergent interests, he recalled his delegation's statement at the 38th plenary meeting, during the general debate. Social justice and respect for human dignity must prevail, in accordance with the principles of the Charter.

31. In his delegation's view, document A/CONF.62/C.2/L.39 would constitute an acceptable framework for an agreement.

32. The CHAIRMAN announced that the discussion on item 6 had been concluded.

33. Mr. ABBADI (Secretary of the Committee) announced that the delegation of Mali wished to be added to the list of sponsors of document A/CONF.62/C.2/L.39.

*The meeting rose at 4.05 p.m.*

## 30th meeting

Wednesday, 7 August 1974, at 11.10 a.m.

*Chairman:* Mr. Andrés AGUILAR (Venezuela).

*Coastal state preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea*

*[Agenda item 7]*

1. Mr. BOTHA (South Africa) said that his delegation supported a uniform 12-nautical-mile territorial sea beyond which, within the exclusive economic zone, the coastal State should exercise exclusive rights over the living resources.

2. With an annual catch of well over 1 million metric tons, South Africa was a major fishing country and had a vital interest in the concept of the exclusive economic zone, particularly with regard to fisheries. South Africa was in a position similar to those countries whose natural living marine resources were being depleted by foreign vessels with little or no regard for rational exploitation. Vessels from 11 foreign States had, during the past decade, ruthlessly expanded their onslaught on the large but not unlimited stocks off South Africa's coasts. Despite warnings by qualified scientists, the valuable hake resource in the south-east Atlantic was now being fished beyond the maximum suitable yield and attempts to rationalize the international fishing off South Africa's coasts through existing international bodies had met with little success. His delegation therefore supported the view that the coastal State should have exclusive jurisdiction over the living marine resources in the 200-mile economic zone since that was the only way to guarantee adequate protection from irrational exploitation. Furthermore, his delegation supported the right of a coastal State to adopt adequate conservation measures to ensure enforcement of its control regulations within the zone

including, where necessary, the impounding of foreign vessels and the prosecution of their crews in the courts of the coastal State.

3. His delegation agreed that if a coastal State was unable to exploit its fisheries resources fully, other States should be allowed to share in the exploitation of those resources on a non-discriminatory basis. Without necessarily recognizing the so-called traditional fishing rights of foreign States in the zone, the coastal State should have sole discretion in that regard and should regulate such fishing activities by means of bilateral or multilateral agreements. Quotas to foreign fishing vessels should be allocated under licence and should be reviewed and adjusted regularly in accordance with scientific evidence as to the state of the stocks and the coastal States' fishing capability. Furthermore, any accommodation of neighbouring land-locked States in the sharing of the living resources of the sea should be effected by means of equitable bilateral agreements.

4. Highly migratory and other living resources of the high seas beyond the limits of national jurisdiction should be managed and controlled by competent international bodies, for example, the International Whaling Commission and the International Commission for the Conservation of Atlantic Tunas. In such cases, the competence and the enforcement capabilities of such bodies should be considerably strengthened to achieve the desired results.

5. His delegation believed that because of their unique life history, anadromous species required special management treatment. The control and management of such species should