

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.35

Summary records of meetings of the Second Committee 35th 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)*

disadvantaged States who had spoken previously. He was heartened by the statements of representatives of other States who had become aware of his country's difficulties and needs and had supported its claims with respect to the future law of the sea. Earlier conventions on the law of the sea had been adopted without sufficient regard to the interests of land-locked States belonging to continents whose land mass extended into a continental shelf. Article 1 of the 1958 Convention on the Continental Shelf⁶ had adopted a virtually limitless definition of the continental shelf. Recent advances in marine technology had rendered practically all of the submarine areas exploitable. By that token almost all submarine areas would fall under the national jurisdiction of coastal States—a situation that would spell an end to the principle of the common heritage of mankind. Possible reasons why there were such discrepancies in the development of the concept of the continental shelf might have been: first, that a significant number of land-locked and other geographically disadvantaged States had not been independent when treaties and other conventions were negotiated on their behalf by colonial Powers, and their interests had been completely ignored; and secondly, the history of the continental shelf had begun only in the 1940's. Had those two facts been taken into account, the concept of the continental shelf would have been appropriately modified and consequently upheld.

67. His delegation had been among the sponsors of document A/CONF.62/C.2/L.39 and urged other States to follow the positive example set by the African Heads of State and Government in part C, paragraph 9 of the Declaration of the Organization of African Unity (A/CONF.62/33). Although the explanations contained in document A/CONF.62/C.2/L.29 were largely sufficient, he wished to state other views held by his delegation which had guided its approach to the subject of the right of free access to and from the sea and other related rights and interests of land-locked countries. The community of nations had recognized for centuries the need for land-locked States to have access to the sea and had made several attempts to adopt a satisfactory convention on the subject. Those efforts to promulgate international treaty law had made a significant contribution to international customary law on the subject.

⁶ *Ibid.*, vol. 499, p. 312.

Nevertheless, there were still short-comings. The obligation that the 1958 Convention on the High Seas had placed on transit States and land-locked States to conclude agreements ensuring free access to the sea had led to a lack of uniformity in observance of the provisions of the Convention. First, there was a delay between the entry into force of the Convention and the conclusion of bilateral agreements. Secondly, those agreements might negate the provisions of the Convention itself, particularly since there was an inherent inequality between States needing transit to the sea and those that did not. Thirdly, the provision that transit facilities should be given on a reciprocal basis was very misleading and did not take into account the realities of the problem. Only the coastal States were in a position to offer land-locked States the right of transit to the sea. Reciprocity was thus a meaningless condition and should not be included in the future convention as a condition for the exercise by land-locked countries of their right of transit to and from the sea.

68. Future international law must also give due attention to contemporary realities. His own country's right of free access to and from the sea by its southern routes had been violated from time to time despite condemnations by the international community. Zambia had decided to abandon the southern route in order to give effect to the United Nations resolutions calling for economic sanctions against the rebel colony of Southern Rhodesia. His country was grateful for the transit facilities offered by friendly neighbouring and other States. He urged the other States to follow the example set by the African Heads of State and Government in part A, article 2, of the Declaration of the Organization of African Unity. A reaffirmation of the eight principles relating to the transit trade of land-locked countries adopted by the United Nations Conference on Trade and Development in 1964⁷ might well be a starting point for work on articles on the right of access.

69. His delegation's strongest wish was that equity would be applied to all the work of the Conference.

The meeting rose at 1.15 p.m.

⁷ See *Proceedings of the United Nations Conference on Trade and Development*, vol. 1, *Final Act and Report* (United Nations publication, Sales No. 64.11.B.11), annex A.1.2.

35th meeting

Friday, 9 August 1974, at 3.25 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Rights and interests of shelf-locked States and States with narrow shelves or short coastlines (*concluded*)*

[*Agenda item 10*]

1. Mr. ROBINSON (Jamaica) asked that when preparing the informal working paper, the officers of the Committee should bear in mind his delegation's proposal in document A/CONF.62/C.2/L.35 in so far as it related to the present item.
2. Mr. BROWNE (Barbados) said he was completing the statement he had made at the 22nd meeting during the discussion of the exclusive economic zone; that concept could not be divorced from the notion of geographically disadvantaged States.
3. His country supported the concept of the exclusive economic zone as a fundamental notion embodying the principles of sovereignty over renewable and non-renewable resources

* Resumed from the 32nd meeting.

and of access by developing geographically disadvantaged States to the living resources of the economic zones of the countries of a region, on equitable terms. It did not support the concept as a new economic order for some developing countries to the exclusion of others. Words of sympathy for the situation of the developing geographically disadvantaged countries were not enough: what those countries wanted was a clear and unambiguous provision in the convention providing for their access to the living resources of a region. He therefore supported the proposals submitted by Jamaica in documents A/CONF.62/C.2/L.35 and 36.

4. He could not agree with those who claimed that the concept of geographically disadvantaged States was too vague or too difficult to define or that it was of secondary concern compared with the concept of land-locked States. The task of the Conference was to create a new and equitable law, not to create exceptions which discriminated against a poor section of the international community. The concept certainly had meaning

to countries like his own, which were small and poor, with narrow continental shelves and few marine resources. An exclusive economic zone would be meaningless to his country without access on equitable terms to the living resources of the countries of the region.

5. The respective rights and obligations of States were set forth satisfactorily in article 2 of the Jamaican proposals, though he would prefer to see the words "on terms and conditions which are equitable to the States concerned" inserted in paragraph 1 and the words: "on the basis of regional, sub-regional and bilateral agreements or other arrangements which have legal effect in international law" inserted in paragraph 2. He was also satisfied with the definition of developing geographically disadvantaged countries contained in article 5 of the Jamaican proposals, which covered the situation of countries like Barbados. There seemed to be embodied in the concept of the disadvantaged State the notion that the economy of that State must inevitably be adversely affected in some substantial way by the new régime for the exclusive economic zone, although that régime had in reality been intended to benefit, not harm, the economies of such countries.

6. Although he had confined his statement to the developing geographically disadvantaged countries, he supported the general proposals concerning the right of the land-locked countries to free access to the sea and its living resources in a region. Those countries must also be provided for in a convention intended to be of balanced political and economic benefit to the whole community of nations.

7. Mr. VAN DER ESSEN (Belgium) said that the item under discussion was not itself a problem, but was closely related to other questions of the law of the sea. Adoption of the concept of a broad economic zone adjacent to the territorial sea would mean that ships from many countries with narrow seas could reach the ocean only by crossing the adjacent zones of other countries. Those countries with narrow seas should be given adequate guarantees to ensure them freedom of navigation between their ports and the sea without being subject to the arbitrary jurisdiction of the coastal States. It would be reasonable for those countries to respect the coastal State's jurisdiction in respect of international measures on pollution, for example; but compliance with national regulations, which might vary widely from country to country, could place them in an impossible position and endanger their maritime activities. Furthermore, their fishermen should be able to cross the economic zones of other countries with their catches, without the risk of being suspected of illegal fishing.

8. Those problems were of vital importance to the geographically disadvantaged countries, in particular those with access to semi-enclosed seas which engaged in fishing activities. His country, which had only 67 kilometres of coastline, bordering on a narrow sea, but possessed the fourth largest world port in terms of tonnage, was very interested in the issue. However, the guarantees it called for should also benefit the land-locked countries. It was essential for the future convention to provide and guarantee the right of access to the sea and the right to participate in the use of the sea for all countries with similar handicaps.

9. Mr. JUNIUS (Liberia) said that there was a wide disparity between the positions of countries like his own which did not possess wide continental shelves and those with shelves extending hundreds of miles beyond the contemplated 200-mile economic zone. The only way to remove such disparities was to abolish the idea of the continental shelf. That would also give meaning and content to the idea of treating the high seas as the common heritage of mankind, which was the aim of the Conference.

10. Mr. CHAO (Singapore) said that the representatives of Nigeria and other countries, at previous meetings, had raised two very interesting ideas: first, that developed disadvantaged States should not ask for a share in the resources of the sea;

and secondly, that some land-locked States possessed mineral resources on land and should also not ask for a share in the resources of the sea.

11. He agreed in principle with the idea that the sea's resources should go only to the most deserving. If development disqualified a disadvantaged State from obtaining the resources of the sea, developed coastal States should also be disqualified. Similarly, if the availability of land mineral resources disqualified disadvantaged States, it should also disqualify coastal States. If followed, therefore, that a coastal State which was either developed or possessed mineral resources on land should not claim an economic zone or rights over the sea-bed. Marine areas not claimed by coastal States according to those criteria should fall under the jurisdiction of an international ocean authority which would manage them for the benefit of all mankind. He commended such a refreshing approach, under which there would be no need to differentiate between advantaged and geographically disadvantaged States.

12. However, the Nigerian delegation's proposals in document A/CONF.62/C.2/L.21/Rev.1 did not differentiate between developing or developed coastal States which did or did not possess mineral resources on land. In other words, any coastal State, irrespective of development or of mineral potential on land, was entitled to claim an economic zone. Then why should those two considerations apply to the disadvantaged States? Why the double standard and discrimination? Rules or criteria should be applied uniformly.

13. It should be remembered that a developed land-locked State sharing the resources of the economic zone would be sharing the resources of a developed neighbour. If it were argued that a developed land-locked State should not share in the resources of the economic zone, then the developed coastal State would be in a more advantageous position than the developing coastal State which had to share with its developing land-locked States. That would clearly create a ridiculous situation.

14. If the Nigerian representative was contemplating introducing those new ideas, namely considerations of development and of mineral potential on land, into his proposal, his own delegation would like to co-operate with him and perhaps become a sponsor of the final proposal.

15. With regard to the proposals in document A/CONF.62/C.2/L.39 for the participation of land-locked and other geographically disadvantaged States in the exploitation of the non-living resources of the economic zone of neighbouring coastal States and for revenue-sharing from the exploitation of the non-living resources of the economic zone, it had been argued that the right over the sea's mineral resources was an acquired right under the 1958 Convention on the Continental Shelf.¹ All countries had acquired rights over the resources of the sea. The somewhat contradictory reasoning advanced to justify the establishment of an economic zone and the retention exclusively by the coastal State of the benefits derived from exploitation of the mineral resources of that zone suggested that there was an Eleventh Commandment: "Thou shalt obey the Continental Shelf Convention but thou shalt not obey the other three Geneva Conventions." The suggestion that the proposals submitted by the land-locked and geographically disadvantaged States in document A/CONF.62/C.2/L.39 were an attempt to dominate the coastal States was unjustified. His delegation could not support the proposals submitted by Pakistan in document A/CONF.62/C.2/L.48: the disadvantaged States wanted justice, not charity.

16. The expression "geographically disadvantaged States" must be clearly defined. The definition contained in document A/CONF.62/C.2/L.35 was a good attempt.

The meeting rose at 3.55 p.m.

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