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41st meeting

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delegation hoped that its provisions would be included in any further working document on the subject.

60. The CHAIRMAN agreed that that would be done.

61. Mr. BARSEGO (Secretary of the Committee) announced that 28 other delegations wished to join the sponsors of document A/CONF.62/C.2/L.42/Rev.1. They were: Algeria, Argentina, Burma, Brazil, Chile, Colombia, Cuba, Cyprus, Ecuador, El Salvador, Ghana, India, Iran, Jamaica, Libyan Arab Republic, Mauritania, Mauritius, Morocco, Nigeria, Panama, Peru, Philippines, Senegal, Trinidad and Tobago, United Republic of Cameroon, Uruguay, Venezuela and Yugoslavia.

The meeting rose at 5.45 p.m.

41st meeting

Friday, 16 August 1974, at 10.50 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Introduction of draft proposals

1. The CHAIRMAN observed that, in accordance with the Committee's wishes, the meeting had been convened in order to give delegations an opportunity to introduce draft proposals.

2. Mr. OLSZOWKA (Poland) introduced document A/CONF.62/C.2/L.26, which had been sponsored by the delegations of Bulgaria, the German Democratic Republic, the Soviet Union and Poland. The document contained draft articles on the territorial sea and dealt in particular with the nature and characteristics of the territorial sea, its breadth and delimitation, and the right of innocent passage.

3. Article 1 reaffirmed the sovereignty of coastal States over their territorial sea, and specified that all the resources in the territorial sea were under that sovereignty. It would be noted that, under the draft articles, coastal States exercised their full sovereignty, subject only to recognized restrictions, such as the right of innocent passage. Comparison with the draft articles concerning the economic zone submitted by the same sponsors together with the delegations of the Byelorussian SSR and the Ukrainian SSR (A/CONF.62/C.2/L.38) revealed a distinction between the proposed rights to be granted to the coastal State in the territorial sea, on the one hand, and in the economic zone, on the other. Article 1 of the proposal in document A/CONF.62/C.2/L.26 followed the pattern of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone,[1] which could be considered as reflecting general rules of international law.

4. The sponsors of the draft articles had taken into account the practice of the large majority of States, and accordingly article 2 authorized each State to determine the breadth of its territorial sea within a maximum limit of 12 nautical miles. That breadth, he believed, represented a fair balance between the interests of coastal States and those of the international community.

5. The sponsors considered that the complex and highly technical problem of measuring the breadth of the territorial sea had been satisfactorily resolved in the 1958 Geneva Convention. Thus they proposed that articles 3 to 13 of that Convention should be reproduced without any change. The different systems of drawing baselines provided for in that Convention were generally recognized and had been referred to by the General Assembly in the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof.[2] The sponsors did not, however, wish to preclude the possibility of filling certain gaps in the Geneva Convention, particularly in relation to the baselines of oceanic archipelagos.

6. The main part of document A/CONF.62/C.2/L.26 dealt with the right of innocent passage through the territorial sea. Generally speaking, the draft articles were more elaborate than the provisions of the Geneva Convention on the Territorial Sea and the Contiguous Zone, and the concept of innocent passage and the ways in which it would be translated into practice were defined more precisely. Thus, all the acts which were to be incompatible with the right of innocent passage were specified in article 16, paragraph 2. Furthermore, in paragraph 3 of that article, as in the Geneva Convention, foreign fishing vessels were required to observe the laws and regulations promulgated by coastal States, and, in paragraph 4, submarines were required to navigate on the surface and to show their flag.

7. Under article 19, the coastal State was authorized to take the necessary steps in its territorial sea to prevent non-innocent passage. Article 20 reaffirmed the right of a coastal State to adopt laws and regulations in respect of innocent passage and, at the same time, stipulated that such laws and regulations must comply with the provisions of the convention as a whole and other rules of international law. It further specified the different areas in which the coastal State could adopt legislation and regulations.

8. Generally speaking, the sponsors of the draft articles had been at pains to strike a balance between the interests of the coastal State and those of international navigation. The coastal State was required not to hamper innocent passage or to discriminate between foreign ships and must ensure that any navigational hazards of which it had knowledge were adequately publicized.

9. Although the sponsors were convinced that the main provisions of the draft articles constituted an equitable and viable solution to the various problems concerning the territorial sea, they were prepared to consider any suggestions or amendments which would improve them and make them more generally acceptable.

10. Mr. RYAN (Australia) introduced the proposals contained in document A/CONF.62/C.2/L.57. He had asked for the draft article, which concerned highly migratory species, to be included in the revised working paper as a distinctive trend. The article stressed the need for international and regional co-operation in matters relating to the conservation and management of highly migratory species. The organizations envisaged in paragraph 1 would issue regulations governing the conservation and management of any given species with the object of ensuring rational exploitation of the species within its maximum sustainable yield. The regulations could include the establishment of national quotas. The provision contained in paragraph 4 (*a*) was very important to many coastal States. If a coastal State preferred to build up a short-range fishing fleet to fish for highly migratory species, it should be protected against competition from long-distance fishing fleets that had the advantage of being able to follow the fish wherever they went.

[1] United Nations, *Treaty Series*, vol. 516, p. 206.

[2] General Assembly resolution 2660 (XXV).

That was particularly so in the case of his own country, whose main fishing for highly migratory species took place within the 200-mile limit. Nevertheless, fishing by coastal States must not violate the regulations of the relevant international organization. He commended the draft article to the Conference as an effective means of managing stocks of highly migratory species while protecting the interest of coastal States and of States operating long-distance fishing fleets.

11. Mr. STEVENSON (United States of America) said that his delegation had presented draft articles on the economic zone and continental shelf in document A/CONF.62/C.2/L.47, but had been unable to introduce them at the time of the general debate on those subjects. He had referred to certain specific proposals in the closed meeting on Informal Working Paper No. 3, but there were a number of general points he wished to make.

12. The proposals contained in the document were intended to replace the draft articles on fisheries[3] and on the coastal sea-bed economic area (A/9021 and Corr.1 and 3, vol. III, sect. 24) previously submitted in Sub-Committee II of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, and were presented as a basis for negotiation subject to agreement on other basic questions of the law of the sea.

13. As far as the general concept of the economic zone was concerned, what was involved was not merely coastal State rights but coastal State jurisdiction. That jurisdiction extended to the renewable and non-renewable resources of the zone, as well as to the rights and duties with respect to the protection of the marine environment and scientific research specified in the convention. It also involved rights of the coastal State in respect of installations used for economic purposes and drilling for any purpose.

14. An effort had been made to balance the rights of the international community recognized by general international law against those granted the coastal State under the convention: nevertheless, rights acquired by the coastal State pursuant to the draft articles, as, for example, with respect to fishing, would prevail. In view of the need for balance in harmonizing different interests in an area of ocean space used for various purposes at the same time, the same language of "without unjustifiable interference" had been used to indicate that the exercise of rights of coastal States should not interfere with those of other States and vice versa.

15. His delegation considered the question of including conflict resolution procedures to be of vital importance in accommodating different uses of the same economic zone.

16. The draft articles relating to fisheries gave the coastal State not just rights, but broad jurisdiction over fisheries conservation and management in the economic zone. The articles indicated clearly that it was the coastal State that determined conservation, subject to certain general principles in the articles. Although generally accepted standards should be taken into account, the coastal State was under no obligation to await recommendations from an international fishery organization or to follow those recommendations.

17. A coastal State must decide for itself if its resources were being fully used by its nationals. There should be recourse to the dispute settlement machinery only when the validity of the coastal State's conservation measures under the articles or the correctness of the coastal State's assessment of full utilization were questioned, and pending settlement the coastal State measures would remain in force.

18. It was vital to the preservation of anadromous species to take into account the fact that they returned to the rivers of their birth to spawn. The draft articles would prohibit fishing for anadromous species seaward of the territorial sea except with the consent of the State of origin.

19. In draft article 19, on highly migratory species, an effort had been made to take into account scientific evidence that made it critical to agree on international arrangements for the conservation and management of such species, while recognizing the clear interest of the coastal States in whose economic zone such fish were caught in an equitable share of the benefits. Suitable principles must be developed to give meaningful recognition to that interest. Moreover, the coastal State in whose economic zone highly migratory species were caught by foreign vessels should be entitled to reasonable fees.

20. The draft articles provided for coastal State sovereign rights over the continental shelf for resource exploitation purposes out to the outer limit of the continental margin, but at the same time, article 27 (*b*) provided for payments to the international community in respect of exploitation beyond the 200-metre isobath or the seaward limit of the territorial sea, whichever was farther seaward. That was suggested as a way to reconcile the positions of States which maintained that their rights extended to the edge of the continental margin beyond 200 miles and those that did not wish to see the common heritage of mankind diminished by recognizing coastal State jurisdiction beyond 200 miles. Although the principle had not yet been agreed upon, he hoped that Governments would consider it as a possible accommodation.

21. Article 28 contained provisions ensuring coastal State control over installations for the exploitation of resources and other economic purposes and over installations that might interfere with the resource rights of the coastal State. Unlike the Convention on the Continental Shelf,[4] the new draft articles envisaged the possibility of safety zones extending more than 500 metres around installations in conformity with any applicable international standards. Such larger zones might be necessary in the case of new types of continental shelf installations such as airports and superports.

22. Mr. TUNCEL (Turkey) said that, according to information recently published by the press, the parliament of a certain country had promulgated a law enabling the Government to authorize enterprises to establish artificial islands up to a distance of 30 miles from its coast. As the representative of the United States had already mentioned, artificial islands and installations included harbours and airports and, in view of the swift rate at which technology was being developed, might soon comprise many other different kinds of installations. That being so, the proposals concerning artificial installations in document A/CONF.62/C.2/L.47 were of extreme interest.

23. The United States delegation was proposing in article 28 safety zones that would extend to a distance of 500 metres around such installations. That distance was the same as that suggested in the Geneva Convention on the Continental Shelf. However, in view of the size of contemporary installations, his delegation believed that such a diameter was insufficient and preferred the idea of "reasonable safety zones", which was also contemplated in the United States draft. Indeed, the safety zones around the larger installations designed to service the giant tankers now being built should extend to a distance of at least a few kilometres. Although the United States draft stated that the breadth of the safety zones should conform to applicable international standards to be established by the Inter-Governmental Maritime Consultative Organization, his delegation believed that the Conference had a duty to elucidate the issue first. He therefore hoped that the Committee would give the problem the attention which it deserved.

24. Another problem which must be resolved was the question of the rights of the coastal State within the safety zone. The United States delegation was of the opinion that the coastal State should take appropriate measures to ensure the

[3] *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21* and corrigendum, annex III, sect. 7.

[4] United Nations, *Treaty Series*, vol. 499, p. 312.

safety of the installations and of navigation. His delegation endorsed that approach, since it did not believe that the coastal State should be entitled to exercise within the zone rights similar to those of innocent passage.

25. The CHAIRMAN pointed out that the meeting was confined to the introduction of proposals and that any comments of the kind expressed by the representative of Turkey should be made at a later stage.

26. Mr. ABBADI (Secretary of the Committee) said that the delegation of Sierra Leone had added its name to the list of original sponsors of document A/CONF.62/C.2/L.62, from which it had been inadvertently omitted. The delegations of Bangladesh, Guatemala, Guinea, Haiti, Indonesia, and Somalia had become sponsors of document A/CONF.62/C.2/L.42/Rev.1 and the delegations of Cuba and the Libyan Arab Republic of document A/CONF.62/C.2/L.58.

The meeting rose at 11.35 a.m.

42nd meeting

Monday, 19 August 1974, at 12.15 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

In the absence of the Chairman, Mr. PISK (Czechoslovakia), Vice-Chairman, took the Chair.

Introduction of draft proposals (*continued*)

1. Mr. JEANNEL (France), introducing document A/CONF.62/C.2/L.54 on behalf of the sponsors, said that the principles and provisions of the 1958 Geneva Convention on the High Seas[1] should be retained for the area beyond the territorial sea, subject to any modifications that might be necessary because of the introduction of new provisions.

2. The sponsors felt it necessary to state precisely the obligations of the flag State since the relevant articles of the Geneva Convention were incomplete. Article 6 *bis* of their draft made article 5 of the Geneva Convention more explicit with respect to the responsibilities of the flag State. Article 10 of the draft was intended to ensure safety at sea and article 21 *bis* provided for co-operation by all States in the suppression of illicit traffic in narcotic drugs by ships on the high seas. The provisions of article 21 *bis*, paragraph 2 were included to prevent ships of small tonnage from discharging illicit cargo before entering ports. Article 21 *ter* was intended to repress unauthorized broadcasting from the high seas, particularly commercial and propaganda broadcasts.

3. The sponsors felt that their proposals could form the basis for useful discussions at the next session of the Conference.

4. Mr. VOHRAH (Malaysia) introduced document A/CONF.62/C.2/L.64, which contained amendments to the draft articles relating to archipelagic States contained in document A/CONF.62/C.2/L.49.

5. He drew attention to the statements made by his delegation on the question of archipelagos at the 35th plenary meeting and at the 25th and 37th meetings of the Second Committee. On each of those occasions, his delegation had clearly stated that the archipelagic concept and its implications were crucial not only to Malaysia but also to the other countries in the South-east Asian region. Statements in the Committee by Malaysia's neighbours bore ample testimony to the great importance that most of the South-east Asian countries attached to the archipelagic concept and its implications.

6. His Government had adopted a political decision to support the archipelagic concept despite the fact that it would create special, and indeed unique, problems for Malaysia. A glance at a map of the South-east Asian region would enable the members of the Committee to understand the extent of the sacrifice that his Government was making in order to try very hard indeed to meet the aspirations of some of its neighbours in the pursuit of their archipelagic claims. His Government had done that in the spirit of friendship, good neighbourliness and understanding.

7. The two parts of his country—West Malaysia and East Malaysia—were separated by the South China Sea, which was dotted by two small groups of Indonesian islands, namely the Anambas and Natuna islands. The archipelagic boundary as claimed by Indonesia would enclose both those groups of small islands within the Indonesian archipelago. The effect of that claim would result in the sudden severance of the free access and all forms of communications which Malaysia had always enjoyed through the high seas between the two parts of its territory. Consequently, it would be deprived of links that were vital to the maintenance of its geographical, economic and political unity as a sovereign and integral nation State. The situation of Malaysia was, he believed, unique in that respect.

8. It would be recalled that a vague provision aimed at accommodating the rights and interests of a country placed in a situation such as his had been included in article 6, paragraph 2, of document A/CONF.62/L.4. His delegation, however, had expressed its reservations concerning that paragraph, which failed to take full account of the serious problems that his country would face, and also concerning the provisions of article 7 of the same document which, in its view, qualified those of article 6.

9. The formulation in article 2, paragraph 5 of document A/CONF.62/C.2/L.49, while it represented an improvement on the previous formulation, should, his delegation believed, take into account both direct access and all forms of communications, which undoubtedly were of paramount significance to his country in the context of its national unity. It should also clearly state that such rights of direct access and communications should continue to be recognised and guaranteed by the archipelagic State. That was why his delegation had submitted the first of the two amendments contained in document A/CONF.62/C.2/L.64.

10. His delegation was also of the view that articles 4 and 5 of document A/CONF.62/C.2/L.49, as formulated at present, would have the effect of qualifying article 2, paragraph 5, of the same document, and would thus render the notion contained therein quite meaningless as far as Malaysia was concerned. It had accordingly proposed a second amendment in document A/CONF.62/C.2/L.64 which would remedy the defect.

11. He appealed to the sponsors of document A/CONF.62/C.2/L.49 to consider both the amendments that his delegation had submitted in a constructive manner and hoped that they would not find too much difficulty in accepting them.

12. Lest his delegation be misunderstood, he wished to state that it was the understanding of his delegation that the archipe-

[1] United Nations, *Treaty Series*, vol. 450, p. 82.