

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.42

Summary records of meetings of the Second Committee 42nd 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)*

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 Seas¹ 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.

logic concept was a concept for which international recognition was being sought by a number of States at the Third Conference on the Law of the Sea. It was still a claim which had not yet been accepted as part of international law. While his delegation supported the archipelagic concept, it did not envisage nor would it accept a situation which would result in the establishment of new rights for the archipelagic States in such a manner as to destroy or jeopardize the legitimate and existing rights of other States. It was, therefore, obvious and imperative that before the archipelagic concept could be accepted as a norm in international law there must be some accommodation, especially on the part of the archipelagic States, to safeguard the legitimate and existing rights of other States adversely affected by the archipelagic concept. Such accommodation should in no way be construed or seen as a concession made by the archipelagic States; rather, it was crucial for the maintenance of peace and friendly relations both for the present and the future, among States in any region, especially in the region of which Malaysia formed a part.

13. He reserved the right of his delegation to submit further amendments on the other provisions contained in document A/CONF.62/C.2/L.49 as and when it deemed it necessary.

14. His delegation would like the amendments contained in document A/CONF.62/C.2/L.64 to be reflected in the revised version of the informal working paper relating to archipelagos.

15. Mr. WISNOEMOERTI (Indonesia) expressed his delegation's appreciation to the representative of Malaysia for submitting document A/CONF.62/C.2/L.64. His delegation wondered, however, what was the reason for including the words "access and all forms of communications" in the amendment to article 2, paragraph 5, of document A/CONF.62/C.2/L.49. The sponsors of the latter document had recognized the need to avoid a situation in which the concept of an archipelagic State might interfere with the direct communications between one part and another part of the territory of an immediately adjacent neighbouring State. As it stood, article 2, paragraph 5, of

the document provided for the maintenance of such direct communications. In drafting the paragraph, the sponsors had considered that the words "direct communications" were quite adequate for that purpose. The words "access and all forms of" were therefore superfluous and could be interpreted so as to include activities other than mere direct communications, a situation to which his delegation would object.

16. Since consultations on the problem between the Indonesian Government and the Governments of neighbouring countries were still being pursued, his delegation would refrain, for the time being, from giving its final views on the amendments in document A/CONF.62/C.2/L.64.

17. Mr. O'DONOGHUE (New Zealand), introducing document A/CONF.62/C.2/L.66, said that the reasons for extending the right of hot pursuit to violations in the economic zone or on the continental shelf had been fully explained in his statement at the 31st meeting of the Committee. He therefore requested the Committee to take note of the draft article in the document which he had just introduced.

18. Mr. ARIAS SCHREIBER (Peru) asked the sponsors of document A/CONF.62/C.2/L.54 to clarify the meaning of article 6 *bis*, paragraph 3, of their draft. That paragraph provided that in taking the required measures, the flag State should conform to generally accepted international norms. It did not say that the flag State should take such measures in accordance with its national regulations, which took account of those international norms. In other words, it provided that the national regulations should merely reproduce the international regulations. That seemed to be out of line with article 10, paragraph 2, which provided that in taking such measures, States should bear in mind international norms. He wondered whether the sponsors had really intended there to be a difference between the two paragraphs he had mentioned.

19. Mr. LABROUSSE (France), speaking on behalf of the sponsors, said that the Peruvian representative's question had been noted; a reply would be given at a subsequent meeting.

The meeting rose at 12.45 p.m.

43rd meeting

Friday, 23 August 1974, at 11 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Organization of work

1. The CHAIRMAN reminded members that at the 9th informal meeting of the Committee, on 15 August 1974, the Committee had approved the proposal on the organization of work which he had submitted for its consideration on behalf of the Officers. The proposal, as adopted, was as follows.

2. First, priority would be given to the completion of the first stage of the Committee's work, namely, the consideration of the informal working papers which had yet to be discussed and their possible revision.

3. Secondly, simultaneously, whenever time was available, the Committee would undertake a second reading of the items allocated to it, which would be regrouped as follows:

Group I: item 2 (Territorial sea); item 4 (Straits used for international navigation); item 16 (Archipelagos); and item 3 (Contiguous zone). Item 17 (Enclosed and semi-enclosed seas), item 18 (Artificial islands and installations), and item 19 (Régime of islands) could also be discussed in so far as they related to the other items included in the group.

Group II: item 5 (Continental shelf); item 6 (Exclusive economic zone beyond the territorial sea); item 7 (Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea); item 10 (Rights and interests of shelf-locked States and States with narrow shelves or short coastlines); and item 11 (Rights and interests of States with broad shelves). Item 9 (Land-locked countries), item 17 (Enclosed and semi-enclosed seas), item 18 (Artificial islands and installations), and item 19 (Régime of islands) could also be discussed in so far as they related to the other items included in the group.

Group III: item 8 (High seas) and item 24 (Transmission from the high seas). Item 18 (Artificial islands and installations) and item 19 (Régime of islands) could also be discussed in so far as they related to the other items included in the group.

4. Thirdly, the aim of the second reading was to reduce, as far as possible, the number of alternative formulations in the working papers. Consequently, discussions should therefore be focused on differences of substance, not on questions of