

# **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.43**

## **Summary records of meetings of the Second Committee 43<sup>rd</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)*

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

drafting, except where new wording could help to combine alternative formulations.

5. Fourthly, there would be an opportunity for delegations to introduce proposals in formal meetings of the Committee. It was to be hoped that those new proposals would be primarily designed to consolidate texts and thus reduce the number of variants. However, most of the work in the second stage would be carried out at informal meetings.

#### Introduction of draft proposals (*continued*)

6. Mr. GALINDO POHL (El Salvador) introduced two documents submitted by his delegation, namely, a working paper on the exclusive economic zone (A/CONF.62/C.2/L.60) and a working paper on the high seas (A/CONF.62/C.2/L.68). The purpose of those documents was to determine the distinctive features of the two areas and to put forward certain norms that might be embodied in the new régime of the high seas. His delegation hoped that its proposals would be reflected in the revised versions of the working papers.

7. Where possible, the proposals submitted by his delegation maintained the language of the 1958 Conventions. Many of the rules embodied in the 1958 Convention on the High Seas<sup>1</sup> codified ancient customs and should be retained; but they needed to be brought into line with other chapters of the convention embodying the new régime. On the whole, however, changes should be kept to the bare minimum in order to facilitate the drafting of the future convention.

8. As far as the exclusive economic zone was concerned, his delegation felt that the following elements should be inserted in the formulations already submitted concerning the characteristics of that zone: other economic uses of the waters, residual competences and rights in favour of the coastal State, and the indication that the exclusive economic zone was contiguous to the high seas.

9. The economic zone had been conceived as an intermediate zone between the traditional territorial sea and the high seas. Its distinctive features must be clearly established, and to that end special attention must be paid to the elimination of any possible confusion between the high seas and the economic zone. Thus, when indicating the limits of the high seas, it would be appropriate to alter the language of the 1958 Convention and to state that the high seas did not include the internal waters, the territorial sea or the exclusive economic zone of a State.

10. Similarly, adjustments were required to the rules concerning the right of hot pursuit. Such pursuit should be possible within the economic zone of a State, might be continued on the high seas, but must cease in the economic zone of the flag State or of a third State. A modification of the rules along those lines was necessary to safeguard investments, installations and exploitation in the economic zone.

11. The 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas<sup>2</sup> reflected the interests of a few individual States and should be revised in order to safeguard the interests of all States without exception and, if possible, the interests of the international community. Thus the final article in document A/CONF.62/C.2/L.68—which was not intended to prejudice the outcome of the work of the Conference—provided that all States had the right to engage in fishing on the high seas and that all States had the duty to co-ordinate their activities to ensure conservation of the living resources in the high seas and equitable participation in the utilization of such resources. It also laid down the obligation for all States to co-operate in the organization of research studies and systems, the regulation of fishing and the prohibition of devices unsuited to the maintenance of the optimum sustainable yield of living resources.

12. His delegation considered that the vague mention of freedoms appearing in the second part of article 2 of the 1958 Convention on the High Seas should be replaced by specific provisions enumerating all the freedoms allowable under international law. Thus document A/CONF.62/C.2/L.68 referred not only to the four freedoms mentioned in the 1958 Convention but also to the freedom of scientific research. Furthermore, his delegation was willing to accommodate the interests of other delegations, although it considered the five freedoms enumerated in article 2 of the document to be sufficient.

13. When the high seas had been subject to very flexible rules of international law, the failure to specify all the freedoms had perhaps been justified. The truth of the matter was that nothing or almost nothing had been prohibited and that for many years the high seas had constituted a privileged area. However, the philosophy underlying the new régime must be different, and all the freedoms should be regulated in order to ensure the orderly, rational and equitable use of the high seas in the contemporary world. Regulation meant neither the disappearance nor the annihilation of freedom, but rather order and the equitable accommodation of the interests of the many users and beneficiaries, according to the guiding principles of contemporary international relations, namely, the juridical equality of all States, non-discrimination, reasonable access to natural resources and the most recent principle, namely international distributive justice.

14. Speaking in terms of political and juridical science, it could be said that the freedoms of the high seas in the sense of complete freedom of action represented the natural state, but that the time had come for the world to make the transition from the natural state to that of international civilized society by means of a convention on the new régime of the high seas. Thus freedoms in the sense of freedom of action would be transformed into freedoms in the sense of regulated powers, reflecting co-operation among States and representing the exercise of an authority granted, protected and safeguarded by the international community.

15. The time was ripe for a new régime of the high seas which took account of the realities of the contemporary world. The process of revision had begun in 1958 with the Convention on Fishing and Conservation of the Living Resources of the High Seas, but little progress had yet been made owing to the lack of robust means for applying the agreed norms effectively. Moreover, that Convention was permeated by the philosophy of conflicting national interests in open competition, whereas the new philosophy called for inter-State co-operation. Thus the high seas would become an international sea whether or not the old name was infused with new meaning or was changed in order to emphasize the separation between the past under the rule of freedom of action and the future under the rule of rationally regulated freedom.

16. The scientific and political theories which had made the high seas a preserve where the firstcomer could exploit the resources had been understandable when those resources had been inexhaustible. However, now that the high seas were threatened by pollution, the depletion of species and activities prejudicial to the health and even the survival of mankind, there was an urgent need for a new régime governing their use and exploitation. It was therefore necessary to ensure the co-ordination of the activities of all States as an expression of their common interest. It was also high time to recognize the interests of all States and of the international community, not simply those of a few individual States, bearing in mind that unconditional freedoms and lack of regulation served the interests of the strongest.

17. Mr. ROUX (France), introducing document A/CONF.62/C.2/L.74, said that the draft article appearing in that document was designed as a solution to the problem raised by the existence of islands which might benefit one State to the detriment of its adjacent or opposite neighbours. Some delega-

<sup>1</sup> United Nations, *Treaty Series*, vol. 450, p. 82.

<sup>2</sup> *Ibid.*, vol. 559, p. 286.

tions found themselves in an impasse because they made a distinction between the rights a State could claim over ocean space as a function of its sovereignty over a part of a continent, as opposed to its sovereignty over island territories. Such a distinction was legally untenable: a territory itself, be it continental or insular, had no right to a continental shelf or an economic zone; it was the State which possessed rights over the ocean space adjacent to its territory, and the foundation of those rights lay in the sovereignty which it exercised over the land. To establish a separate régime for islands would be to accept the erroneous notion that a State's sovereignty could be different in nature according to whether it was exercised over a continent or an island.

18. It was one thing to define the rights of States over the ocean space adjacent to their territory, but it was something else to delimit the continental shelf or the economic zone of adjacent or opposite States and to take into account, in so doing, the problems raised by the islands belonging to one of the States. As long as that difference was not perceived, islands would continue to be a source of controversy.

19. His delegation's draft article was designed to make the distinction clear and to show that the concerns of certain delegations could be satisfied without jeopardizing one of the least controversial principles of international law—the indivisibility of State sovereignty.

20. Any consideration of the problem of delimitation must take into account the great diversity of geographical situations. The natural conclusion was that the idea of a universal method must be rejected. Delimitation was primarily a bilateral or regional matter. All that should be done at the world level was to lay down guidelines for the negotiators. The one decisive factor was equity, a point made by the International Court of Justice in connexion with the North Sea cases.<sup>3</sup>

21. Mr. TREDINNICK (Bolivia), introducing the draft articles on the "regional economic zone" (A/CONF.62/C.2/L.65) sponsored by his delegation and that of Paraguay, said that the innovatory terms "regional sovereignty" and "common heritage of the region" might appear strange to some delegations. In time, however, it would be realized that the only way to achieve justice and equity was to establish large regional economic zones in which all the States of a region, especially the land-locked countries, would co-operate fully.

22. Mr. SHEARER (Lesotho) said that his delegation had held consultations with the delegations of other land-locked countries and those consultations had led to the amendments contained in document A/CONF.62/C.2/L.45/Rev.1. The revised document differed from the original primarily in the deletion of the proposed detailed article defining the legitimate interests of the transit State. The sponsors had agreed to drop that proposal because of the difficulties it involved for other delegations. That left one essential proposal, namely, the inclusion of air transport among the means of transport defined in the draft proposal submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction in 1973 in document A/AC.138/93 (A/9021 and Corr.1 and 3, vol. II, p. 16). The consequential omission of references to bilateral and multilateral treaties on air transport had also been retained. Furthermore, the sponsors had made it clear in the revision that only civil, or non-military, air transport was involved.

23. Provision I of Informal Working Paper No. 9, which was taken from the original six-Power draft submitted to the seabed Committee, had no definition of means of transport. On the face of it, that trend would cover air transport, but his delegation noted that the reflection of trends did not preclude subsequent drafting refinements which might well reinstate the full text of the 1973 proposal. The fact that it was intended to exclude such means of transport was, however, reflected in the

last paragraph of provision IV, which maintained the superiority of existing air transport agreements over the rights of free access and transit to and from the sea. The sponsors simply wished to restate their conviction that access to the sea was a special right which could not be subordinated to a régime devised for more general rights of transit by scheduled air services.

24. The sponsors therefore believed that the trend evidenced by the revision of document A/CONF.62/C.2/L.45 could be reflected in Informal Working Paper No. 9 by inserting under provision IV an alternative B to the existing single provision, which would then become alternative A. The text of alternative B would be identical to the existing provision except for the deletion of the third paragraph. That alternative was a matter of substance and not merely of form, and the sponsors therefore requested that it be shown as a trend.

25. Mr. WISNOEMOERTI (Indonesia), introducing document A/CONF.62/C.2/L.67, said that in describing the purpose and basic elements of the concept of an archipelagic State, his delegation had always stressed the importance of the concept of maintaining and safeguarding the political unity and the territorial integrity of archipelagic States, of which Indonesia was one. It was in that light that the draft article should be construed. While his delegation was aware of the fact that the main trends relating to that item had been revised twice, it hoped that the officers of the Committee would be able to take the draft article into account.

26. Mr. ARAIM (Iraq), introducing documents A/CONF.62/C.2/L.71 and Add.1, said that article I stressed the vital question of freedom of navigation through straits customarily used for international navigation and connecting two parts of the high seas. A most vital element of the draft was the emphasis placed on the high seas, whether they were open seas or semi-enclosed seas. There were States bordering on semi-enclosed seas that were part of the high seas, and those States had no access to other parts of the high seas except through straits. Thus, freedom of navigation in the semi-enclosed seas was necessary for the coastal States and the world community as a whole.

27. His delegation had previously stated, both in plenary meetings and in the Committees, that in semi-enclosed seas all coastal States should have equal rights with respect to the living resources of the area. They should co-operate through regional arrangements for the conservation and exploitation of those living resources and in order to combat and control marine pollution and to preserve the marine environment.

28. The draft contained, in article 5, a definition of semi-enclosed seas which constituted part of the high seas. There were three elements which should form the basis for that definition: the semi-enclosed sea should be an inland sea; it should be surrounded by two or more States; and it should be a corridor of the high seas between States.

29. His delegation believed that any area of the sea which was beyond the 12-nautical-mile zone and the internal waters of a State should be regarded as part of the high seas.

30. Mr. PARSİ (Iran) said that the draft articles in document A/CONF.62/C.2/L.72 had been submitted in order to assist the Committee in formulating the emerging trends on item 17, concerning enclosed and semi-enclosed seas. It was preliminary in nature and his delegation was open to suggestions that would help to produce a more comprehensive text.

31. The term "enclosed sea" as defined in article 1, paragraph (a), should not be confused with the term "closed sea". An enclosed sea was not a fully closed sea such as the Caspian Sea or the Aral Sea, which had no outlets to the open oceans. It was, instead, a small body of inland water, such as the Persian Gulf and the Baltic Sea, which had at least one outlet to the open sea. The term should therefore be used in the strictest

<sup>3</sup>North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 3.

sense and only in reference to small bodies of water such as those he had mentioned.

32. The term "semi-enclosed sea" as defined in article 1, paragraph (b), could be used in a broad sense to cover larger sea basins along the margins of the main ocean basins, more or less enclosed by a land mass—whether continental or insular—and with one or more narrow outlets to the oceans. Examples of that category of seas were the Caribbean Sea and the Andaman Sea. There were a great number of enclosed or semi-enclosed seas, gulfs and bays throughout the world, and some—like the Gulf of St. Lawrence, the Gulf of California, the Kara Sea, Hudson Bay and the Java-Flores-Banda group—were bordered by a single State. Others, such as the Sea of Okhotsk, the East China Sea, the South China Sea, the Mediterranean, the Celebes Sea, the Persian Gulf, the Red Sea, the Black Sea and the Baltic Sea, were surrounded by two or more States. It was that latter category of enclosed and semi-enclosed seas, and particularly the smaller ones bordered by several States, that presented the most acute problems; and those problems could not be solved by global norms only. About one-half of the countries participating in the Conference bordered on or were located in one or more enclosed or semi-enclosed seas. Many of those seas faced serious problems, among which were pollution and the management of living resources. Those problems could not be resolved by general rules applicable to open oceans; instead, a special legal régime should be recognized for those seas. It was to that end that article 2 of the draft had been proposed.

33. The Secretary-General of the Inter-Governmental Maritime Consultative Organization (IMCO) had stated at the 22nd plenary meeting of the Conference that a new and important feature of IMCO's work on marine pollution was the concept of the special areas established under the 1973 International Convention for the Prevention of Pollution from Ships as being particularly vulnerable to pollution and regulated by special provisions. He had also said that where necessary, additional provisions for such areas could also be formulated on a regional basis. Article 3 of the draft sought to establish, in the

future convention on the law of the sea, additional power and jurisdiction for the coastal States of an enclosed or semi-enclosed sea to adopt preventive and restrictive measures under regional arrangements regarding the uses of those seas. One aspect of such restrictive measures should be directed at the preservation of the marine resources. The living resources of an enclosed or semi-enclosed sea were limited and vulnerable to over-exploitation and should therefore be managed and exploited solely by the coastal States or under the authorization of the coastal States concerned.

34. Owing to the special characteristics of enclosed and semi-enclosed seas, scientific research should not be conducted there unless specifically authorized by the coastal States concerned, as provided for in article 4 of the draft.

35. His delegation wished to emphasize that the concept of enclosed or semi-enclosed seas had been introduced and supported with a view to establishing special legal status for those seas in terms of empowering the coastal States to adopt, under regional arrangements, additional protective measures to safeguard their environmental, economic and social interests against abuses of the seas. There was a need for peace, co-operation and harmony among all nations in their activities relating to the ocean space, particularly with respect to enclosed or semi-enclosed seas, and his delegation hoped that the Conference would succeed in contributing to that end.

36. Mr. McLOUGHLIN (Fiji), introducing document A/CONF.62/C.2/L.69, said that it was intended to define the term "high seas". The existing definition in the 1958 Convention did not reflect the trend with respect to archipelagic States and waters and it should therefore be amended. The definition was intended to ensure that archipelagic waters would not be considered part of the high seas.

37. Mr. ABBADI (Deputy Secretary of the Committee) announced that Colombia, Guyana and Morocco had become sponsors of documents A/CONF.62/C.2/L.66, 42/Rev.1 and 16, respectively.

*The meeting rose at 11.55 a.m.*

## 44th meeting

Tuesday, 27 August 1974, at 10.50 a.m.

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

### Introduction of draft proposals (*concluded*)

1. Mr. KAZEMI (Iran) said that, despite his two interventions on the question of the continental shelf, the trend to which his delegation subscribed had not been reflected in provision XIII of the formulation of main trends (Informal Working Paper No. 3/Rev.2) which had been prepared on that subject. Since the Chairman had ruled that all new proposals must be submitted to the Committee in writing, his delegation was constrained to submit the draft article in document A/CONF.62/C.2/L.84. It stipulated that the sovereign rights of the coastal State over its continental shelf were exclusive and that revenues derived from the exploitation of the natural resources of the continental shelf should not be subject to any revenue-sharing.

2. Although it was already too late to include the Iranian draft article in Informal Working Paper No. 3/Rev.2, his delegation hoped that a way could be found to include it in the final consolidated document the Committee intended to produce, since the draft article he had just submitted represented a

main trend supported by many delegations, including Canada and Chile.

3. The CHAIRMAN explained that it would be difficult if not impossible to meet the request made by the representative of Iran, owing to the fact that the Committee had decided to limit the number of revisions of the informal working papers to two. The contemplated consolidated document would therefore contain the second revision of all informal working papers. The consolidated document should be considered as a tool designed simply to give an idea of what had been said and done at the current session of the Conference. Those proposals made by delegations after the second revision of the informal working papers would of course become part of the documentation of the Committee which could then be taken up again at any moment at the next session of the Conference. The summary records of the Committee's meetings would also reflect such proposals. Furthermore the enumeration of trends in the informal working papers was not exclusive and did not imply that there were no other trends.