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Summary records of meetings of the Second Committee 9th 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)*

8th meeting

Thursday, 18 July 1974, at 10.45 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Organization of work

The CHAIRMAN announced that new draft articles had been submitted by Bulgaria, Czechoslovakia, the German Democratic Republic, Poland, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics, dealing with the question of straits used for international navigation (A/CONF.62/C.2/L.11) and by Nigeria, on the territorial sea (A/CONF.62/C.2/L.12). An informal document, Working Paper No. 1, had also been submitted. If there were no objections, he would close the meeting so that the Committee could proceed informally.

The meeting rose at 10.50 a.m.

9th meeting

Friday, 19 July 1974, at 11.25 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Organization of work

1. The CHAIRMAN informed the members that the officers of the Committee had decided to prepare a revision of Informal Working Paper No. 1, which would be considered at the meeting on Monday, 22 July.

Contiguous zone

[*Agenda item 3*]

2. Mr. TELLO (Mexico), supported by Mr. MBAYA (United Republic of Cameroon) and by Mr. LAWSON (Togo), suggested that the Committee postpone consideration of item 3 in view of the fact that there would be no further justification for having a contiguous zone if the concept of the patrimonial sea were included in the new law of the sea. He pointed out, moreover, that only one draft article on the contiguous zone had been submitted (A/9021 and Corr.1 and 3, vol. IV, sect. 3), so that if there were no agreement with regard to the elimination of the contiguous zone, it would perhaps be best to put the only existing text "on ice" and to take a decision at a later date.

3. Mr. JAGOTA (India) reminded the Committee that the proposal concerning the contiguous zone referred to by the representative of Mexico had been submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction by his delegation. With regard to the first alternative just proposed by Mexico, he indicated that he was not sure whether the concept of an economic zone or patrimonial sea would confer special jurisdiction on coastal States to prevent infringement of customs, fiscal, immigration or sanitation regulations; if so, the concept of a contiguous zone would be superfluous irrespective of whether the jurisdiction to be granted to the coastal State was broad or limited. If it was decided to maintain the contiguous zone as an area in which specific powers were to be exercised, it should be limited to a breadth not exceeding 18 nautical miles outside the territorial sea. He proposed, accordingly, that the blank spaces before the words "nautical miles" in his delegation's proposal, indicating the limits of the contiguous zone, should be completed by the number 30. The second alternative proposed by Mexico was also agreeable to him.

4. Mr. DJALAL (Indonesia) agreed that the contiguous zone would lose its importance if the idea of an economic zone were approved, but since the latter would essentially relate to questions of economics and marine resources, his delegation pre-

ferred that the concept of the contiguous zone should not be discarded completely, since it involved other powers of the coastal State with regard to customs, fiscal and police control, and sanitation and immigration regulations.

5. Mr. ROSENNE (Israel) said that his delegation could see no reason to perpetuate the concept of the contiguous zone. In the context of the new law of the sea, it would remain applicable only in the event that no agreement was reached on extending the breadth of the territorial sea to 12 nautical miles or on establishing a maritime zone in which the coastal State would enjoy various exclusive rights, especially of an economic nature.

6. The Israeli delegation believed that if a State decided not to extend its territorial sea up to the maximum agreed limit, but still deemed it necessary to enforce its regulations with regard to taxation, customs or immigration up to that limit, it should be able to do so. If a State was entitled to determine the outer limit of its sovereignty up to a distance of 12 nautical miles, it obviously could also elect to exercise lesser powers in that same zone.

7. In view of those considerations, the Israeli delegation was inclined to agree that consideration of the item should be deferred.

8. Mr. ABDEL HAMID (Egypt) said that his delegation had already referred to the necessity of maintaining the concept of the contiguous zone. In that connexion, it should be noted that Egyptian legislation provided for a contiguous zone of 6 miles, since in areas of heavy maritime traffic the coastal State should have facilities for enforcing its regulations.

9. The jurisdiction implied by the concept of the contiguous zone was completely different from that applicable to the economic zone, and there were practical reasons for maintaining the former concept.

10. Mr. NJENGA (Kenya) said that the role envisaged for the contiguous zone in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone¹ was quite limited and was serviceable in the context of a territorial sea of 12 miles. On the other hand, if the new concept of an economic zone extending to 200 miles were accepted, the contiguous zone would become totally useless, and his delegation was therefore willing

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

to postpone consideration of that item until after other related items had been discussed.

11. Mr. ARAIM (Iraq) stated that the concept of the contiguous zone differed from that of the economic zone. While he did not oppose the proposals to postpone consideration of the question of the contiguous zone until after the question of the economic zone had been discussed, he pointed out that the concept of the economic zone related only to jurisdiction over resources. The concept of the contiguous zone, on the other hand, involved the jurisdiction of the coastal State in regard to customs, fiscal, sanitation and immigration regulations.

12. Mr. MEDJAD (Algeria) agreed with the delegation of Mexico that the idea of a contiguous zone was an anachronism and could be confused with the concepts of a territorial sea or an economic zone. However, having listened to the statement by the representative of India, and bearing in mind the level of pollution in the Mediterranean, he felt that his country needed strong regulations to protect the marine environment adjacent to its coasts. Consequently, it was preferable to maintain the concept of a contiguous zone, but to postpone discussion of the subject until the concept of the economic zone had been considered.

13. Mr. POLLARD (Guyana) asked whether the proposal by the representative of Mexico did not come under the provisions of rule 28 of the rules of procedure.

14. The CHAIRMAN replied that the delegation of Mexico had not made a formal proposal and that rule 28 therefore did not apply.

15. Mr. KHARAS (Pakistan) said that the 1958 Convention had not envisaged the concept of a contiguous zone with regard to resources but only in relation to national security, fiscal and customs control, and sanitation and immigration regulations. It was not clear, therefore, whether jurisdiction with regard to both resources and administrative matters would be embodied in the concept of an economic zone. Consequently, he felt that it would be preferable to consider the item after the question of the economic zone had been discussed.

16. Mr. MBAYA (United Republic of Cameroon) said that the extension of the zone of national jurisdiction—territorial sea, patrimonial sea or an economic zone of 200 nautical miles—rendered the concept of a contiguous zone void and superfluous. First of all, the contiguous zone, which, like the economic zone or patrimonial sea, began physically at the outer limit of the territorial sea, was confused with the latter; and secondly, the two concepts had the same socio-economic basis and the same objective: the economic and social development of the coastal State. Moreover, on that level the concept of a contiguous zone was technically inferior to that of an economic zone, for the latter had a definitely positive aspect, in that it aimed at the exclusive exploitation by the coastal State of the riches of the sea adjacent to its coasts with a view to increasing its economic development, whereas the former merely had a negative role, that of protecting the economy of the coastal State.

17. Thus, from whichever angle the problem was viewed, the conclusion was the same: the concept of a contiguous zone had had its day.

18. Mr. GALINDO POHL (El Salvador) said that the concept of a contiguous zone was historically justified at the time when the coastal State was granted a form of jurisdiction over and above the old 3-mile territorial sea. The new concepts of a territorial sea of 12 miles or an economic zone of 200 miles called for a decision as to whether the contiguous zone would be absorbed into those spaces or whether a zone of jurisdiction would have to be established in addition to the territorial sea or the economic zone. As some delegations had proposed a special régime for navigation in the economic zone, it remained to be seen whether the idea of a contiguous zone could be embodied in that concept. For all those reasons, he felt that it

would be preferable to defer consideration of the question of a contiguous zone until the question of an economic zone had been discussed.

19. Mr. AL-NIMER (Bahrain) said that the contiguous zone had a specific purpose in relation to national security, fiscal and customs control and sanitation and immigration regulations, and the concept was not incompatible with the concepts of a territorial sea or an economic zone. On the other hand, all items were being considered in the order in which they appeared on the Committee's agenda and that order should be followed. He therefore felt that consideration of item 3 should be completed and that the conclusions of the discussion could subsequently be co-ordinated with those resulting from consideration of the question of the economic zone.

20. Mr. ARIAS SCHREIBER (Peru) said that, although the concept of a contiguous zone was bound to disappear as the result of the development of the law of the sea, the comments of the representative of India with regard to the possible inclusion of that concept in the idea of a territorial sea or an economic zone should not be ignored. The matter should be given careful consideration because it pertained to the residual rights of the coastal State in wide zones of national jurisdiction. He felt that it was reasonable to postpone discussion on it until the question of the economic zone had been considered.

21. Mr. AL-SALEM AL-SABAH (Kuwait) supported the Mexican proposal to postpone consideration of item 3, and said that he could not accept the view that the contiguous zone was redundant. His country had set a 12-mile limit to its territorial sea by government decree and reserved the right in the future to claim a contiguous zone. He was therefore opposed to deletion of the item from the agenda.

22. Mr. FATTAL (Lebanon) said that the economic zone, as it was understood by most representatives, extended beyond the contiguous zone; the establishment of an economic zone would even mean the end of the concept of the territorial sea. The coastal State would have greater responsibilities in the economic zone than it currently had in the contiguous zone: it would have to exercise control over customs, fiscal arrangements, sanitation and police matters and to guarantee protection to workers; in short, it would have to ensure the rule of law in that zone. The concept of a contiguous zone would thus become superfluous and the concept of hot pursuit would have to be reviewed.

23. Mr. OGUNDERE (Nigeria) said his delegation did not consider that the exercise of powers over customs, fiscal matters, sanitation and immigration were no longer needed or were useless in the contiguous zone: rather, they would increase as a result of exploitation of the resources. Furthermore, there was the problem of pollution of the marine environment. His country had extended its territorial sea, by decree, to 30 nautical miles, and the draft articles on the territorial sea submitted by his delegation in document A/CONF.62/C.2/L.12 lent support to those calling for a further extension of the territorial sea. The concept of the economic zone should be discussed both from the point of view of exploitation of its resources and in relation to customs, fiscal, sanitation and policing powers, inasmuch as those powers in the contiguous zone remained in full force.

24. Mr. LACLETA Y MUÑOZ (Spain) said that the contiguous zone used to be considered as extending beyond the territorial sea, but that was an outdated concept. It was recognized in the 1958 Geneva Convention as a zone established for specific purposes, in which the coastal State had special powers. In that context, the contiguous zone should not be eliminated. There were three possibilities: to make the economic zone an autonomous entity by reason of its specific purposes in relation to a territorial sea of limited breadth; to consider the contiguous zone as a special strip in the economic zone, a possibility that would seem more acceptable than the

first one, which did not allow for combining the different powers; or to have a broad territorial sea with several régimes, in which case the contiguous zone would come to be regarded as one of the special régimes.

25. Mr. AL-SALEM AL-SABAH (Kuwait) moved the adjournment of the debate.

26. The CHAIRMAN said that in accordance with rule 28 of the rules of procedure he would invite two representatives to speak in favour of, and two against, the motion.

27. Mr. TELLO (Mexico) supported the motion of the representative of Kuwait and proposed that Informal Working Paper No. 2 should include the text of the only existing draft on the subject, which appeared in document A/9021 and Corr.1 and 3, volume IV, section 3, and that item 4 should be taken up at the next meeting.

28. Mr. ARIAS SCHREIBER (Peru) supported the motion of Kuwait and said that Informal Working Paper No. 2 should not only include the Indian draft, but should also state that the countries that supported a territorial sea of 200 miles considered that the contiguous zone was unnecessary and would be absorbed within the jurisdiction of the coastal State.

29. Mr. LIMPO SERRA (Portugal) opposed the motion by the representative of Kuwait and said that he would prefer the debate on item 3 to continue.

30. Mr. AL-NIMBER (Bahrain) opposed the motion made by the representative of Kuwait. The whole meeting had been devoted to discussing the postponement of the debate and he felt that the item should continue to be discussed, particularly as it related to the powers of the State in the contiguous zone.

31. After a procedural discussion in which Mr. AL-SALEM AL-SABAH (Kuwait) and Mr. MOVCHAN (Union of Soviet Socialist Republics) took part, the CHAIRMAN said that, since there was no consensus, the Committee should vote on the motion to adjourn the debate. An adjournment would not preclude submission of proposals on the item at any time.

The motion was adopted by 63 votes to 17, with 26 abstentions.

32. The CHAIRMAN said that the Committee would return to the item on the contiguous zone before dealing with agenda item 8, on the question of the high seas.

The meeting rose at 1.05 p.m.

10th meeting

Friday, 19 July 1974, at 3.30 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Straits used for international navigation

[*Agenda item 4*]

The CHAIRMAN noted that no representative had asked to speak on the item under consideration. He suggested that the meeting should be adjourned.

It was so decided.

The meeting rose at 3.35 p.m.

11th meeting

Monday, 22 July 1974, at 12 noon

Chairman: Mr. Andrés AGUILAR (Venezuela).

Straits used for international navigation (*continued*)

[*Agenda item 4*]

1. Mr. LACLETA Y MUÑOZ (Spain) pointed out that his delegation was one of the sponsors of the draft articles on navigation through the territorial sea, including straits used for international navigation, submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (A/9021 and Corr.1 and 3, vol. III, sect. 6). Also, agenda item 4.1, on innocent passage through straits used for international navigation, was closely related to item 2.4, on innocent passage in the territorial sea. Under item 4.1, the Second Committee would consider how the principles examined during consideration of item 2.4 would apply to particular situations. To that end, the revised text of Informal Working Paper No. 1, which had been submitted by the Chairman, should be available to the Committee, since the Committee could not consider particular cases without having an over-all view of the question.

2. The CHAIRMAN said that he would consult the officers of the Committee to obtain their views on the revised version of

the working paper he had submitted, and that delegations were clearly entitled to refer, in their interventions, to items related to the matter under consideration, and specifically, at that juncture, to item 2.4.

3. Mr. KAZEMI (Iran) referred to the earlier statement of the views of his delegation on the question of straits used for international navigation at the 23rd plenary meeting, in which it had noted, first, that the sovereignty of the coastal State in its territorial sea was subject only to the exercise of the right of innocent passage of ships; secondly, that passage through straits used for international navigation must not affect the legal status of the territorial sea when the straits were situated within the territorial sea of one or more States; thirdly, that rules could be devised to safeguard transit through the straits while taking into account the need to protect the security and other interests of the coastal State.

4. The Iranian delegation considered that some of the draft articles before the Committee tended to be prejudicial to the legal status of that part of the territorial sea which constituted a strait used for international navigation. Moreover, any pro-