Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/32

Statement made by Mr. G. D. Arsenis on behalf of the Secretary-General of the United Nations Conference on Trade and Development at the 42nd meeting, held on 15 July 1974

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume III (Documents of the Conference, First and Second Sessions)*

Note: The agreement reached in the sea-bed Committee on 27 August 1971 on the organization of its work read as follows:

"While each sub-committee will have the right to discuss and record its conclusions on the question of limits so far as it is relevant to the subjects allocated to it, the main Committee will not reach a decision on the final recommendation with regard to limits until the recommendations of Sub-Committee II on the precise definition of the area have been received, which should constitute basic proposals for the consideration of the main Committee."

It is therefore recommended that the same understanding should be carried forward in respect of the Main Committees of the Conference, preliminary to the adoption of the pertinent final provisions by the Conference.

DOCUMENT A/CONF.62/31

Report of the General Committee

[*Original: English*]
[*12 July 1974*]

1. At its second meeting on 12 July the General Committee decided to recommend to the Conference to amend the Rules of Procedure of the Conference in accordance with rule 65 by adding two new rules as suggested below:

I

To be inserted after rule 40, as follows:

"*Meaning of the term 'States participating'*

"Subject to the provisions of rules 1 to 5 and without prejudice to the powers and functions of the Credentials Committee, the term 'States participating' in relation to any particular session of the Conference means any State whose representatives have registered with the Secretariat of the Conference as participating in that session and which has not subsequently notified the Secretariat of its withdrawal from that session or a part of it. The Secretariat shall keep a Register for this purpose."

II

To be inserted after rule 62, as follows:

"*Observers for national liberation movements*

"1. National liberation movements recognized by the Organization of African Unity or by the League of Arab States may designate representatives to participate as observers, without the right to vote, in the deliberations of the Conference, the Main Committees and, as appropriate, the subsidiary organs.

"2. Written statements of such observers shall be distributed by the Secretariat to the delegations at the Conference."

2. The Rules of Procedure of the Conference should be renumbered accordingly.

DOCUMENT A/CONF.62/32

Statement made by Mr. G. D. Arsenis on behalf of the Secretary-General of the United Nations Conference on Trade and Development at the 42nd meeting, held on 15 July 1974*

[*Original: English*]
[*15 July 1974*]

The Secretary-General of UNCTAD greatly regrets his inability to be here. Pressing commitments have obliged him to stay in Geneva and he has asked me to convey to you some views that he would have expressed, had he been here.

This Conference encompasses issues of great importance, and of considerable complexity—such as the territorial sea, the economic zone, passage through straits, the régime of islands, the definition of the International Area, fishing and the conservation of the living resources of the high seas, the preservation of the marine environment and so on. I should like, however, to confine my remarks to another issue of equal importance which is also before the Conference, namely, the exploitation of the mineral resources of the sea-bed beyond national jurisdiction—an issue that has been the subject of intergovernmental discussions and secretariat studies within UNCTAD.

Mr. President, it is now generally agreed that the greater availabilities and presumed lower costs associated with the production of minerals from the sea-bed would bring benefits to the world as a whole. The central question that arises in this connexion is: how would these benefits be distributed among the member States?

The General Assembly recognized that these new resources are the "common heritage of mankind" and that they are available for exploitation by or on behalf of the international community "for the benefit of mankind as a whole, taking into account the special interests and needs of the developing countries". The task before the Conference is to render this broad conceptual framework operational by establishing practical arrangements for the exploitation of the sea-bed resources. In accomplishing this task, the Conference will, no doubt, wish to take into account developments in interrelated areas.

For some time now, the world community has recognized the need for concerted international action to underpin the development of developing countries, and to reduce the economic gap between developed and developing countries. The United Nations Development Decade is a clear reflection of the resolution of the international community to accord to the question of development a priority second to none. It would be logical, therefore, to expect that the exploitation of sea-bed resources beyond national jurisdiction would be organized in a manner that would ensure maximum income benefit for developing countries and effective participation, on a preferential basis, by these countries in the production, processing and marketing of the produce.

Another fundamental preoccupation of our times that has direct relevance to the issue before the Conference is of some-

*Circulated in accordance with the decision taken by the Conference at its 42nd meeting.

what more recent origin. Recent developments have clearly illustrated that existing arrangements in the area of commodity trade are inadequate; and that prices that remain too low for too long endanger future supplies. There is now a greater awareness of the convergence of interests of both producing and consuming countries, and, consequently, of the need for a new strategy that would meet the legitimate needs of consuming countries for assured supplies and of producers for strengthened earnings and assured markets; both consumers and producers have an interest in an orderly price situation and in the rational exploitation of non-renewable resources.

The sixth special session of the General Assembly recognized the need for a comprehensive approach to commodities of export interest to developing countries. In pursuance of the Programme of Action adopted by the General Assembly,[172] work is now under way in UNCTAD with a view to elaborating a new commodity strategy that would encompass several commodities. It appears that the new strategy would need to be more multidimensional than past approaches. While there would be a continuing need for arrangements covering specific commodities, such arrangements could be worked out in the context of a wider framework of principles and guidelines. These may include, where appropriate, arrangements for buffer stocks which are based not on one, but on several commodities supported, for example, by a central fund. They would also need to include not only price stabilization measures, but, in addition, measures in the fields of marketing and distribution; the assurance of adequate supplies; the linking of prices of commodities to the prices of manufactured goods; and the provision of finance for distribution and for new investments for processing these products in producing developing countries.

It is quite clear that the new supplies that will come from the exploitation of sea-bed resources will have to be taken into account in working out a comprehensive commodity strategy. The question that arises is how should these resources be managed so as to obtain an appropriate balance between the objective of maximizing the net income of the proposed International Sea-Bed Authority and the objective of obtaining remunerative and equitable prices for the land-based producers of minerals. The question assumes increased importance because the developing countries are the main suppliers to world markets of most of the minerals likely to be exploited from the sea-bed in the early future. This particular aspect of the problem has received attention in UNCTAD at both the intergovernmental and secretariat levels as a result of a request in General Assembly resolution 2750 (XXV) of December 1970, supplemented by resolution 51 (III), adopted by the third session of UNCTAD, calling for the continued study of measures necessary to avoid the adverse economic effects which exploitation of the sea-bed might have on the prices of minerals exported primarily by developing countries.

The reports prepared by the UNCTAD secretariat, in pursuance of these directives, have been transmitted to this Conference with an explanatory note, the text of which is reproduced in Conference document A/CONF.62/26.

It can be safely assumed that if normal commercial criteria were to guide the production of minerals from the sea-bed, one important result of such exploitation would be that it would bring direct benefits to the consumers of the minerals concerned who are, by and large, the mineral-using industries in developed countries. As so often happens in primary production, the productivity gain resulting, in this case, from technical progress making lower-cost sea-bed production possible, would be largely passed on to the consumers in the form of lower prices.

On the other hand, the chief consequence of sea-bed production for land-based producers of the minerals concerned would be that their total export earnings from these minerals would grow less rapidly than they would have done otherwise, and in some instances they might even decline from previously realized levels. For example, the UNCTAD secretariat's case studies relating to three of the minerals concerned—cobalt, manganese ore and copper—indicate that, at a very modest volume of sea-bed output in 1980, the export earnings of the developing countries in that year would be lower than in the absence of sea-bed mining by $360 million.

It would also seem that the net income likely to accrue to the proposed International Sea-Bed Authority would fall short of the potential export earnings forgone by established developing exporting countries as a result of the introduction of sea-bed mining; if so, it would be insufficient to compensate those countries for their loss of potential export income, and no funds would be available for the benefit of other developing countries, including the land-locked developing countries.

In brief, it would appear that in the absence of special arrangements to protect the interests of developing countries, the availability of minerals from the sea-bed, while contributing to world economic development, may also result in a widening of the income gap between developed and developing countries. There is, therefore, an imperative need for the international community to make firm arrangements in advance of the production of minerals from the sea-bed in order to ensure that such activity would not adversely affect the interests of developing exporting countries—or, better, would bring to them and to other developing countries positive benefits. If the international community decides to adopt the compensatory approach to the problem of protecting the trade interests of developing exporting countries, it would be necessary that the shortfall in the required amount of financial compensation would be made good by developed consuming countries and/or the international financial institutions. In this way, a due share of the economic benefits flowing to consuming countries would be transferred to compensate for the loss of potential earnings of developing exporting countries and to provide benefits to other developing countries.

An alternative approach to the problem would consist essentially of arrangements to ensure that output from the sea-bed will not result in prices which are not equitable and remunerative to reasonably efficient developing countries which are established producers of the minerals concerned. For this purpose, it would be necessary that the rate of production from the sea-bed, or the rate of disposal of such output, or the selling prices or related terms of its disposal, should be strictly controlled by the proposed International Authority, in order that the market prices for the minerals concerned would not be depressed below levels declared by the international community as remunerative and equitable. Thus, appropriate arrangements might involve the setting of "floor" selling prices in respect of output from the sea-bed. This approach would bring closer the rational exploitation of sea-bed resources to the endeavours to establish a comprehensive commodity strategy, as envisaged in the Declaration and the Programme of Action of the sixth special session of the General Assembly. Moreover, if the interests of established producing countries were protected through the setting of minimum selling prices for sea-bed minerals at levels designed to be remunerative to producers from land-based sources, a greater proportion of the net revenues of the Sea-Bed Authority would become available to assist the economic development of non-exporting developing countries, including land-locked countries, as envisaged by the General Assembly in its resolution 2750 (XXV).

Whatever the nature of the arrangements might be, the establishment of a properly constituted International Authority either able to undertake sea-bed mining itself or, alternatively, equipped with the full regulatory and "taxing" powers, appears to be a prerequisite to the equitable utilization of these new resources. A fundamental requirement concerning the or-

[172] Resolution 3202 (S-VI).

ganization of sea-bed production should presumably be that no excessive stimulus should be given to such production. If production activities were carried out by national enterprises, rather than directly by the International Authority, provisions as to "taxation" and the conditions governing entry of the product into the home country of the producing enterprise should be such that supplies originating from the sea-bed should not receive preferential treatment by comparison with land production of developing exporting countries. Consideration may also be given to the possibility of avoiding the built-in "preference" for sea-bed production which would arise from the carrying out of such production by integrated enterprises based in developed countries. Moreover, the General Assembly, in resolution 2750 (XXV), envisaged the transfer to non-producing, including land-locked, developing countries of equitable shares of the benefits derived from the operations of the Sea-Bed Authority. This objective would seem to call also for the imposition of the maximum rates of royalties, taxation and fees which "the traffic will bear". The combined imposts should, at minimum, have an incidence at least equivalent to that of the average of national imposts on land production of the minerals concerned.

The issues before this Conference are complex indeed and the reconciliation of the various legitimate objectives will require careful consideration. But the end in view is a clear one: to evolve arrangements so that the exploitation of mineral resources of the sea-bed beyond national jurisdiction brings benefits to mankind as a whole, and particularly to developing countries.

DOCUMENT A/CONF.62/33

Declaration of the Organization of African Unity on the issues of the Law of the Sea

[*Original: French*]
[*19 July 1974*]

The Council of Ministers of the Organization of African Unity, meeting in its Twenty-first Ordinary Session in Addis Ababa, Ethiopia, from 17 to 24 May 1973, and in its Twenty-third Ordinary Session in Mogadiscio, Somalia, from 6 to 11 June 1974,

Considering that in accordance with the charter of the Organization of African Unity, it is our responsibility to harness the natural and human resources of our continent for the total advancement of our peoples in all spheres of human endeavour,

Recalling resolutions CM/Res. 245 (XVII) and CM/Res. 250 (XVII) of the Seventeenth Session of the Council of Ministers of OAU on the Permanent Sovereignty of African Countries over their natural resources,

Recalling the OAU Council of Ministers resolution CM/Res 289 (XIX) and decision No. CM/Dec. 236 (XX),

Recalling also resolution 2750 (XXV) and 3029 A (XXVII) of the United Nations General Assembly,

Aware that many African countries did not participate in the 1958 and 1960 Law of the Sea Conferences,

Aware that Africa, on the basis of solidarity, needs to harmonize her position on various issues before the forthcoming United Nations Conference on the Law of the Sea due to be held at Caracas, Venezuela, in 1974, and to benefit therefrom,

Recognizing that the marine environment and the living and mineral resources therein are of vital importance to humanity and are not unlimited,

Noting that these marine resources are currently being exploited by only a few States for the economic benefit of their people,

Convinced that African countries have a right to exploit the marine resources around the African continent for the economic benefit of African peoples,

Recognizing that the capacity of the sea to assimilate wastes and render them harmless and its ability to regenerate natural resources are not unlimited,

Noting the potential of the sea for use for non-peaceful purposes, and convinced that the submarine environment should be used exclusively for peaceful purposes,

Recognizing the position of archipelagic States,

Recognizing that Africa has many disadvantaged States including those that are land-locked or shelf-locked and those whose access to ocean space depends exclusively on passage through straits,

Noting the recent trends in the extension of coastal States' jurisdictions over the area adjacent to their coasts,

Having noted the positions and the views of other States and regions,

Declares:

A

Territorial sea and straits

1. Pending the successful negotiation and general adoption of a new régime to be established in these areas by the forthcoming United Nations Conference on the Law of the Sea, this position prejudices neither the present limits of the territorial sea of any State nor the existing rights of States;

2. That the African States endorse the right of access to and from the sea by the land-locked countries, and the inclusion of such a provision in the universal treaty to be negotiated at the Law of the Sea Conference;

3. That the African States in view of the importance of international navigation through straits used as such endorse the régime of innocent passage in principle but recognize the need for further precision of the régime;

4. That the African States endorse the principle that the baselines of any archipelagic State may be drawn by connecting the outermost points of the outermost islands of the archipelago for the purposes of determining the territorial sea of the archipelagic State.

B

Régime of islands

5. That the African States recognize the need for a proper determination of the nature of maritime spaces of islands and recommend that such determination should be made according to equitable principles taking account of all relevant factors and special circumstances including:

(*a*) The size of islands

(*b*) Their population or the absence thereof

(*c*) Their contiguity to the principal territory

(*d*) Their geological configuration

(*e*) The special interest of island States and archipelagic States.