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Fiji, New Zealand, Tonga and Western Samoa: draft articles on islands and on territories under foreign domination or control

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)*

F. POSITION OF LAND-LOCKED STATES IN THE RÉGIME OF THE SEA-BED AND THEIR PARTICIPATION IN THE SEA-BED MACHINERY

The draft articles submitted by land-locked States also contain, in the form of general guidelines, certain provisions concerning their participation in the exploration and exploitation of the sea-bed and its resources.

Article XVII first declares that land-locked States shall have the right of free access to and from the area of the sea-bed, a principle which was already raised in discussions on the régime of the sea-bed in the sea-bed Committee. For this purpose the land-locked States shall have the right to use all means and facilities provided with regard to traffic in transit.

It is obvious from the language of this provision that land-locked States do not require some privileges in this respect, but only equal rights and opportunities in the framework of the régime to be established for the area of the sea-bed beyond the limits of national jurisdiction. The aim of this article is to ensure that land-locked States will exercise free and unrestricted transit across the territory of one or more transit States not only for reasons of their access to the surface and waters of the sea for purposes of its traditional uses, such as navigation, fisheries and others, but as well to its newly accessible areas of the sea-bed and subsoil thereof. Of course, their activities in this area shall be governed by principles and provisions of the convention concerning the régime of the sea-bed and its machinery.

Furthermore, article XVIII includes some guidelines regarding representation of land-locked States in organs of the future international organization of the sea-bed in which not all member States would be represented, in particular in its Council. In such organs there should be an adequate and proportionate number of land-locked States, both developing and developed.

Article XIX deals with the very crucial point of decision-making in the machinery. It is understandable why the land-locked States, as a group of countries facing special problems arising from their disadvantaged geographical position in relation to the seas, insist on observing the principle that decisions of substance shall be made with due regard to their special needs and problems. It means that on questions of substance which affect the interests of land-locked States, decisions shall not be made without their participation or even against them. In this connexion the land-locked States maintain the view that they shall have equal rights in the decision-making process of the machinery.

G. RELATION OF THE GENERAL REGULATION TO SPECIAL AGREEMENTS AND QUESTION OF MOST-FAVOURLED-NATION CLAUSE

As has been already stated, a general regulation of the problems of land-locked countries would not at all exclude the

possibility of concluding bilateral, regional or multilateral agreements in which special arrangements would be made. On the contrary, the draft requires the settlement of specific questions between the land-locked and transit States concerned in such agreements. Therefore, article XX of the draft states that the provisions of the future convention governing the right of free access to and from the sea shall not abrogate existing special agreements between two or more States, nor shall they raise an obstacle as regards the conclusion of such agreements in the future.

On the other hand, the regulatory role of the new convention, which will introduce a general standard, must be preserved. Paragraph 2 of the same article provides therefore that in case existing special agreements ensure less favourable conditions than those which will be contained in the convention, the States concerned will undertake that they shall bring them in accord with the present provisions at the earliest occasion.

A similar undertaking is usual in conventions dealing with a general regulation. It was also provided in article 10 of the 1921 Barcelona Statute on Freedom of Transit.

Of course, the future convention, as the 1965 New York Convention, shall not preclude providing greater facilities in special agreements.

Since the new convention would establish rights and facilities in view of the special geographical position of land-locked States and their fundamental right to free access to and from the sea, its provisions, as well as provisions of special agreements regulating the exercise of the right of free access to and from the sea and the area of the sea-bed, should be excluded from the application of the most-favoured-nation clause in favour of any third State. This principle, included in article XXI of the draft, is analogous to article 10 of the 1965 New York Convention.

Similarly, it does not prevent the extension of facilities and special rights that would be accorded to land-locked States under the new convention or special agreements in favour of a land-locked State which would not become a party to this convention on the basis of the most-favoured-nation clause of a treaty between that land-locked State and a contracting State of the convention which have arranged such facilities and special rights.

The last provision of the draft, article XXII, includes a principle concerning settlement of disputes that would arise from the interpretation and application of the articles relating to land-locked countries. This principle, too, is drafted in general terms, stating that any such dispute "shall be subject to the procedures for the settlement of disputes provided for in the convention".

Therefore, it is no way prejudicial to a later agreement on procedures that would govern the settlement of disputes arising from the interpretation and application of other provisions of the future convention on the law of the sea.

DOCUMENT A/CONF.62/C.2/L.30

Fiji, New Zealand, Tonga and Western Samoa: draft articles on islands and on territories under foreign domination or control

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

A. ISLANDS

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

2. Subject to paragraph 5 of this article, the territorial sea of an island is measured in accordance with the provisions of the Convention applicable to other land territory.

3. The economic zone of an island and its continental shelf are determined in accordance with the provisions of this Convention applicable to other land territory.

4. The foregoing provisions have application to all islands, including those comprised in an island State.

5. In the case of atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea shall be the seaward edge of the reef, as shown on official charts.

[These provisions are intended to be without prejudice to the question of the delimitation of island ocean space as between adjacent or opposite States, or in other special circumstances. Nor do they purport to deal with the régime of islands applicable to an archipelagic State or to the off-lying archipelago of a coastal State, or the case of a fringe of islands along a coast in its immediate vicinity referred to in article 4, paragraph 1, of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.]¹⁴

¹⁴United Nations, *Treaty Series*, vol. 516, p. 206.

B. TERRITORIES UNDER FOREIGN DOMINATION OR CONTROL

In respect of a territory whose people have attained neither full independence nor some other self-governing status following an act of self-determination under the auspices of the United Nations, the rights to the resources of the economic zone created in respect of that territory and to the resources of its continental shelf are vested in the inhabitants of that territory to be exercised by them for their benefit and in accordance with their needs and requirements. Such rights may not be assumed, exercised or profited from or in any way infringed by a metropolitan or foreign power administering or occupying that territory.

DOCUMENT A/CONF.62/C.2/L.31/Rev.1

Japan: revised draft article on the continental shelf

[Original: English]
[16 August 1974]

1. The coastal State exercises sovereign rights over the continental shelf (the coastal sea-bed area) for the purpose of exploring it and exploiting its mineral resources.

2. The outer limit of the continental shelf (the coastal sea-bed area) shall not exceed a maximum distance of 200 nautical miles from the baseline for measuring the breadth of the territorial sea as set out in . . .

3. (a) Where the coasts of two or more States are adjacent or opposite to each other, the delimitation of the boundary of the continental shelf (the coastal sea-bed area) appertaining to such States shall be determined by agreement between them, taking into account the principle of equidistance.

(b) Failing such agreement, no State is entitled to extend its sovereign rights over the continental shelf (the coastal sea-bed area) beyond the median line, every point of which is equidistant from the nearest points of the baselines, continental or insular, from which the breadth of the territorial sea of each State is measured.

4. Nothing provided herein shall prejudice the existing agreements between the coastal States concerned relating to the delimitation of the boundary of their respective continental shelf (coastal sea-bed area).

DOCUMENT A/CONF.62/C.2/L.32

Greece: draft articles on the exclusive economic zone beyond the territorial sea

[Original: English]
[31 July 1974]

Article . . .

The provisions applicable for the determination of the economic zone of a State are as a general rule applicable to its islands.

Article . . .

1. Where the coasts of two or more States are adjacent or opposite to each other and the distance between them is less than double the uniform breadth provided in this Convention, the delimitation of their economic zones and of their sea-bed areas shall be determined by agreement among themselves.

2. Failing such agreement, no State is entitled to extend its rights over an economic zone and sea-bed area beyond the limits of the median line every point of which is equidistant from the nearest points of the baselines, continental or insular, from which the breadth of the above areas of each of the two States is measured.