Third United Nations Conference on the Law of the Sea

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

Document:-
A/CONF.62/64

Letter dated 3 May 1978 from the representative of New Zealand to the President of the Conference

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume IX (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Seventh and Resumed Seventh Session)*

United Kingdom of Great Britain and Northern Ireland and United Republic of Cameroon.

Total membership: 39.

Mr. Satya Nandan was appointed Chairman of that negotiating group.

III. Negotiating group on item (5)

The question of the settlement of disputes relating to the exercise of the sovereign rights of coastal States in the exclusive economic zone

(a) *To represent the group of African States:* Algeria, Angola, Egypt, Lesotho, Liberia, Madagascar, Nigeria, Swaziland and Zambia.

(b) *To represent the group of Asian States:* China, Fiji, India, Indonesia, Iran, Oman, Pakistan and Singapore.

(c) *To represent the group of Latin American States:* Argentina, Chile, Colombia, Ecuador, Guyana, Jamaica and Mexico.

(d) *To represent the group of Eastern European States:* Bulgaria, Hungary, Union of Soviet Socialist Republics and Yugoslavia.

(e) *To represent the group of Western European and other States:* Australia, Canada, Denmark, Germany, Federal Republic of, Iceland, Norway and Switzerland.

(f) *United States of America.*

Total membership: 36.

Mr. Constantine Stavropolous was appointed Chairman of that negotiating group.

It was understood that the allocation of seats between the different regional groups did not follow the established pattern of regional representation and was to be regarded as exceptional because of the subject-matter of the issue involved.

IV. Negotiating group on item (7)

(Delimitation of maritime boundaries between adjacent and opposite States and settlement of disputes thereon)

It was decided that as the problems relating to this issue were essentially of a bilateral nature, the decision to establish a nucleus should not apply to this negotiating group, but that all countries which had a special interest in the subject should be free to inform the Chairman of the group of their desire to participate in the work of the group.

Mr. E.J. Manner was appointed Chairman of that negotiating group.

It was understood that the countries referred to above would form the nucleus of the negotiating group in question but that every negotiating group would be open-ended in the sense that any State participating in the Conference and not included in the original nucleus would be free to join in negotiating groups with the same status as the original members.

These decisions were endorsed by the Conference at its 92nd plenary meeting held on 18 April 1978.

DOCUMENT A/CONF.62/64

Letter dated 3 May 1978 from the representative of New Zealand to the President of the Conference

[*Original: English*]
[*3 May 1978*]

I have the honour to recall that on 6 May 1976 the delegations of Fiji, New Zealand, Tonga, the Trust Territory of the Pacific Islands, and Samoa, wrote to you in the following terms:

"In the course of the present session of the Conference, a number of countries and territories of the Pacific region, on whose behalf this letter is signed, have consulted together about the scope of the final clauses of the convention.

"You will recall that in Caracas the Conference recognized that certain territories, while not yet independent, had such a substantial measure of self-government as to entitle them to separate representation as observers at the Conference. In paragraph 3 of resolution 3334 (XXIX), the General Assembly requested the Secretary-General to invite certain named territories to participate as observers in any future session of the Conference. Subsequently, there was a further recognition of the special status of territories named in paragraph 3 of resolution 3334 (XXIX) in article 13 of part IV of the single negotiating text issued to the Conference by the President (A/CONF.62/WP.9[1]).

"Access to dispute settlement procedures as contemplated by article 13 of part IV of the single negotiating text would be of considerable benefit to these territories. It will not, however, be possible to secure full protection for the rights accorded them by the new convention, including the rights referred to in article 136 of Part II of the single negotiating text (A/CONF.62/WP.8/Part II[2]), unless they are accorded the status of contracting parties. Likewise, there cannot be full assurance that the obligations of the new convention will be adequately met by these territories without such status.

"There are, of course, precedents for the adherence to international agreements of territories which have not achieved full statehood.

"Two of the territories named in paragraph 3 of resolution 3334 (XXIX)—Papua New Guinea and Suriname—have now become independent and will be able to adhere to the convention as Member States of the United Nations. The delegations who have signed this letter intend at the appropriate time to propose that the final clauses of the convention make provision for adherence to the convention by the remaining territories listed in paragraph 3 of resolution 3334 (XXIX).

"It may be—especially in the light of the suggestion that you made in the General Committee this afternoon—that this issue will be addressed in the relatively near future. Because of the importance it has for territories in the Pacific region, we have thought it desirable to give you advance notice of our intentions.

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. V (United Nations publication, Sales No. E.76.V.8).

[2] *Ibid.*, vol. IV (United Nations publication, Sales No. E.75.V.10).

"The delegation of Nauru, although not a signatory of this letter, wishes to be associated with the views expressed in it."

In view of your intention that the Conference should take up the question of the final clauses in plenary session on Friday, 5 May, I should be grateful if you would arrange for this letter to be circulated as a Conference document in good time for consideration by the participants in these meetings.

(Signed) M. J. C. TEMPLETON
Head of the Delegation of New Zealand
to the Third United Nations Conference
on the Law of the Sea

DOCUMENT A/CONF.62/65

Letter dated 5 May 1978 from the representative of Nepal to the President of the Conference

[Original: English]
[8 May 1978]

I have the honour to submit a memorandum relating to the establishment of a common heritage fund in the interest of mankind.

I should be most grateful if you would arrange to circulate this letter and the accompanying memorandum as a conference document.

(Signed) S. K. UPADHYAY
Head of the Delegation of Nepal
to the Third United Nations Conference
on the Law of the Sea

MEMORANDUM RELATING TO THE ESTABLISHMENT OF A COMMON HERITAGE FUND IN THE INTEREST OF MANKIND AS A WHOLE BUT PARTICULARLY IN THE INTEREST OF DEVELOPING NATIONS

In a world facing the problems of scarcity in all directions and the mounting problem of ever increasing needs of the growing population, the untapped riches of minerals and energy of the oceans and their immense potentiality of producing food for survival as well as nutrition as a result of development of mariculture are of such importance that they cannot be settled without international co-operation among nations on a grand scale.

For the first time, the potentiality of exploitation and the possibility of sharing the resources of the oceans are providing mankind with a great opportunity to co-operate on a global scale, by making possible the establishment of a new world order and by giving rise to new political and economic theories to give a new dimension to human collaboration. It provides mankind with an opportunity to make tangible progress in the establishment of a new international economic order and a new international political understanding that will strengthen global co-operation, making conflict obsolete and understanding among nations imperative, thus paving the path to progress for all mankind.

The present exercise involved in developing a new and lasting convention cannot be separated from the essential need of establishing an intertwined relationship between the new law of the sea and the establishment of a new international economic order as well as a new political concept of common ownership based on the principle of the common heritage of mankind. The concept of common ownership in certain areas of the globe introduces a new and revolutionary régime hitherto unknown in the annals of human history and quite different from the concept of national sovereignty. It underlines the imperativeness of a new type of régime in that part of the globe which has not been under any national jurisdiction. This is based on the grand vision of a human society in a supra-national state. This is a forward-looking concept which points to the eventual evolution of a world order for man on this planet. This requires a bold and imaginative outlook in order to strengthen such an essential concept for the survival and progress of mankind. However, this can be done only with the establishment of an inseparable link between the element of co-operation and the element of sharing the benefits of co-operation. For all these reasons the authors of the new convention must realize that the rules of the past could no more meet the challenges of the present or the requirements of the future.

So in order to make the law of the sea convention a meaningful step toward the new international economic order it is essential that it contain a meaningful implementation of the principle that inspired the holding of the Third United Nations Conference on the Law of the Sea: the principle that the oceans are "the common heritage of mankind." For the principle of the common heritage is a new and revolutionary approach to international law, an approach full of promise for the human family, promise of justice and peace as well as a healthy and fruitful ocean environment.

Future generations will judge the Conference by its success or failure in implementing the common heritage principle. They will judge it especially by its success or failure in seeing that a substantial portion of ocean mineral wealth is used to build a just and peaceful world society.

Unfortunately in the more than 10 years since it was enunciated by Mr. Arvid Pardo in the fall of 1967, the common heritage principle has suffered from misinterpretation, from attrition and from neglect. As the concept of the economic zone increased in popularity, some nations insisted, wrongly and tragically, that the economic zone and the common heritage were mutually exclusive. That idea makes a cruel hoax of the concept of the common heritage. For the overwhelming proportion of ocean mineral wealth and of marine species are found within the economic zone. And under traditional international law all that area, except for a narrow territorial sea, was traditionally regarded as *res nullius*, i.e. no one's property, or as *res communis*, i.e. common property.

The concept of the common heritage of mankind has been damaged by those who contend that there is a necessary incompatibility between the idea of the common heritage and the idea of the economic zone. We believe that both ideas are essential and we believe that they are necessarily intermixed, i.e. the economic zone can and should make a substantial contribution to the implementation of the concept of the common heritage.

It must be stressed that the economic zone is a very desirable concept and one which must be institutionalized. It has an important role to play, in guarding off-shore resources against the kind of indiscriminate exploitation which was common under the régime of *res nullius*, a régime which was