

Third United Nations Conference on the Law of the Sea

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96th Plenary meeting

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the importance and frequency of which the work of the Conference bore testimony.

52. With regard to the final clauses, he said that his delegation had submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction a written proposal concerning the relationship between the future convention and previous bilateral and multilateral treaties. Following difficulties related to their definition, it had subsequently withdrawn the proposal, but, in view of the way the current debate was going, it thought that the question would arise again, and it would therefore revert to it at the appropriate time.

53. He agreed with the view that the various substantive provisions of the convention should be settled in the first place; however, his delegation was in favour of the acceptance of reservations.

54. Mr. VALENCIA-RODRÍGUEZ (Ecuador) said that he wished to make some preliminary comments on the preamble and final clauses and reserved his right to return to them in greater detail at a later stage.

55. His delegation considered the preamble as important as the body of the text; it should refer to the background and main objectives of the convention, particularly the principal resolutions of the General Assembly which governed its scope and purpose. Those resolutions included not only resolution 2749 (XXV), which was mentioned in the preamble, but mention should be made of resolutions 2750 (XXV) and 3067 (XXVIII), the first, concerning the peaceful utilization of the sea-bed and the ocean floor and the use of their resources in the interests of mankind, and the second, concerning the interrelation of the various parts of ocean space which therefore should be considered as a whole. The preamble should also state certain principles of international law, such as good faith, respect for validly concluded treaties, and the settlement of disputes by agreement between the parties concerned.

56. The final clauses should make provision for the widest possible participation, not only by all States, but also by dependent territories which enjoyed autonomy in their external relations. Consideration of the possible participation of certain national liberation movements that enjoy a certain status in the international community should also not be ruled out, nor should consideration of various intergovernmental organizations such as the Food and Agriculture Organization of the United Nations, the Inter-Governmental

Maritime Consultative Organization and the South Pacific Permanent Commission. The work of the last-named body had been fully recognized. No decision could be taken concerning the entry into force of the future convention until the composition of the Council of the Authority was known. It would, however, be important to require acceptance or ratification by a sufficiently large number, say half or two thirds, of the States participating in the Conference. On the question of the relationship of the convention with earlier agreements, his view was that the 1958 Geneva Conventions could remain operative as between the parties which had ratified them, in so far as they were compatible with the new convention, and the same principle could, in general, apply to the other sub-regional or regional legal instruments.

57. In view of the flagrant omissions from the negotiating text, it would be impossible to reach a consensus in the adoption of the convention and it would also be impossible to prevent a clause envisaging reservations. If reservations were not to be admissible, means would have to be found of taking due account of the position of certain delegations which was not reflected in the existing text. His delegation intended to propose in the Second Committee the inclusion, as article 54 *bis*, of a safeguard clause which would provide for co-ordination between municipal law and the provisions of the convention with respect to zones beyond the limit of 12 nautical miles. But it might happen, depending on the way in which the discussions proceeded, that his delegation might submit that proposal anew, at a plenary meeting, for inclusion as a final clause. His delegation would make further comments when it had a more detailed and clearer idea of the main aspects of the convention.

58. Mr. AL-WITRI (Iraq) said that the final clauses should make provision for the possibility of opening the convention for signature by all the observers at the Conference, particularly the national liberation movements. Those movements should have all the rights and obligations established by the convention and the chance to participate in the organizations which would be set up at a later stage.

59. His delegation entirely approved the content of the transitional provision. Nevertheless, it believed that the scope of that provision should be extended to preserve the rights of dependent or occupied territories or those under colonial domination, for the sea belonged to all peoples and not merely to States.

The meeting rose at 1.05 p.m.

96th meeting

Friday, 5 May 1978, at 3.35 p.m.

President: Mr. H. S. AMERASINGHE.

Adoption of a convention dealing with all matters relating to the law of the sea, pursuant to paragraph 3 of General Assembly resolution 3067 (XXVIII) of 16 November 1973, and of the Final Act of the Conference (continued)

Preamble and final clauses (continued)

1. Mr. OMAR (Libyan Arab Jamahiriya) remarked that it was impossible at the present stage to give detailed consideration to the final clauses, especially the clause on reservations, which was intimately linked with the nature of the provisions to be included in the convention. His delegation hoped that the convention as adopted would be acceptable to

the largest possible number of States, if not to all States, and that reservations would therefore be limited as far as possible.

2. One point of capital importance to many delegations was the need to protect the interests of peoples subject to colonial and foreign domination. He hoped that the suggestions previously made in that connexion by the Arab delegations would be taken into consideration. As regards the participation of international governmental organizations, he felt that such participation might be acceptable if it were founded on well-defined criteria and perhaps linked to the contribution made by such organizations to the achievement of the convention's objectives.

3. Mr. COQUIA (Philippines) associated himself with delegations which had already spoken in favour of including among the final clauses a provision on reservations. The convention covered a very wide subject and would affect the whole of mankind. It should therefore be open to all. A reservations clause would encourage States which might otherwise not be inclined to do so to accede to the convention. The reservations clause should be as liberal as possible, provided, of course, that reservations made were not incompatible with the object and purpose of the convention.

4. Mr. GÓMEZ ROBLEDO (Mexico), stressing the importance of the preamble as an expression of the philosophy underlying the convention and as an inspiration to practical action, introduced his delegation's suggestions for paragraphs to be inserted in an appropriate place in the preamble (A/CONF.62/L.24).

5. The first of the three suggested paragraphs emphasized the innovatory nature of the concept of the common heritage of mankind. Whereas the notion of an exclusive economic zone had an antecedent in the concept of the "patrimonial sea", the concept of a common heritage was proclaimed in the convention for the first time. The second paragraph was based on the consideration that the major resources of the sea were not renewable and that it was therefore urgent, in view of the rate of population growth, to think of their continuing use for the benefit of future generations. The third paragraph was particularly important in that it established a connexion between the convention and the new international economic order. In conclusion, he read out the proposed text for a new article 1 (A/CONF.62/L.25) which his delegation had already suggested at other meetings of the Conference without encountering any objection.

6. Mr. RUIVO (Portugal) said that the preamble should be as simple and functional as possible but should not, however, omit a reference to a major principle which would provide an appropriate framework for the future interpretation of the convention—namely, that the establishment of a global régime for ocean space in a spirit of peaceful co-operation among peoples would contribute to the construction of a new international economic order based on equity and justice. It was also desirable that the preamble should include a specific reference to the continuing validity of customary international law in matters not expressly regulated by the provisions of the convention.

7. With regard to the final clauses, he said that in view of the increasingly important role of international organizations, the possibility of their participation in the convention in accordance with highly selective criteria deserved thorough study. As the representative of Denmark had pointed out at the previous meeting, the participation of the European Economic Community constituted a special case; the Portuguese delegation advocated the inclusion among the final clauses of an appropriate provision governing the application of the convention both for member States of the European Economic Community themselves and in relations between those States and other States.

8. As regards reservations, his delegation was of the view that, in principle, reservations on matters of substance should not be permitted in a convention which was to be of a global and universal nature and which would result from negotiations based on a "package deal". Questions regarding the relationships between successive treaties on the law of the sea should be governed by the general principles set forth in the Vienna Convention on the Law of Treaties.¹

9. In conclusion, introducing his delegation's proposal for a final clause on periodic conferences on international ocean

affairs (A/CONF.62/L.23), he recalled that his delegation had raised the question at the fourth session of the Conference in 1976.² At that time, the delegations of Sri Lanka³ and Suriname⁴ had developed similar ideas; and the proposal made at the current session by the delegation of Peru (A/CONF.62/L.22) was designed, at least in part, to achieve similar objectives. In making its proposal, the Portuguese Government was guided by the consideration that the development of the uses of the sea and its resources was becoming increasingly rapid as a result of modern technologies which changed the nature of exploitation and gave rise to new problems of conservation. In the circumstances, intensified scientific activity and broader international co-operation were necessary. The purpose of the proposed periodic conferences would be to ensure a continuous dialogue among States, the value of such a dialogue having been amply demonstrated by the present Conference. Besides facilitating the interpretation and application of the convention, such periodic meetings would help to prevent possible conflicts. The proposed arrangement, whereby the agenda of the periodic conferences would be drawn up by the Secretary-General in consultation with the specialized agencies and other international organizations concerned within the United Nations system and on the basis of the replies of States parties to a circular letter had been chosen as the most flexible and least likely to result in the duplication of effort that arose from the proliferation of new bodies. His delegation was ready to co-operate with other interested delegations and would welcome any suggestion aimed at improving the proposal for periodic conferences contained in document A/CONF.62/L.23.

Mr. Perišić (Yugoslavia), Vice-President, took the Chair.

10. Mr. AL ATTRACHE (Syrian Arab Republic) supported the remarks made at the previous meeting by the representative of Iraq concerning the need to include a final clause on the status of annexes. The inclusion of such a provision in the informal composite negotiating text⁵ constituted a faithful and precise reflection of the collective will expressed at the second session of the Conference. To alter the text by omitting such a clause would constitute a backward step by calling into question the consensus already achieved. One of the essential objectives of the Conference and the convention was to establish the principle that the sea-bed and everything above it was the common heritage of all mankind. Peoples who were under colonial and foreign occupation, and who were represented by national liberation movements, must not be deprived of their fair share of that heritage. On the question of reservations, he felt that the right to enter reservations on fundamental principles would ensure the universality of the convention.

11. Mr. EL-BARAADI (Egypt) said that the question of reservations was of overriding importance. Reservations should not be allowed, if the convention was to carry due weight.

12. He supported the proposal by the representatives of New Zealand and Ecuador (95th meeting) that, in equitable application of the principle of universality, liberation movements and occupied territories should be permitted to participate in the convention. The Arab group, which he represented, also believed that the liberation movements which had been invited to attend the Third Conference on the Law of the Sea as observers should be entitled to sign the convention. The suggestion that international organizations

¹See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. V (United Nations publication, Sales No. E.76.V.78), 60th meeting.

²*Ibid.*, 59th meeting.

³*Ibid.*, 63rd meeting.

⁴*Ibid.*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

⁵*Official Records of the United Nations Conference on the Law of the Sea, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27.

should also participate deserved support, since it would facilitate a co-ordinated application of the convention.

13. Mr. AKKRUM (Suriname) said that his delegation also supported the proposal by the representative of New Zealand that contracting party status should be granted to the territories referred to in paragraph 3 of General Assembly resolution 3334 (XXIX). His country had been one of the territories named in resolution 3334 (XXIX) and fully appreciated the importance of contracting party status for those territories, if they were to fulfil their international obligations under the informal composite negotiating text.

14. Mr. HINATA (Japan) said that three factors must be taken into account in considering the important question of the number of ratifications or accessions necessary for the entry into force of the convention in accordance with the provisions of article 300 of the informal composite negotiating text.

15. The first two factors, which were of a general nature, were the need to ensure the early entry into force of the convention, and the need to ensure its universality. It was primarily those two factors which had been taken into account in arriving at the figure of 22—roughly one fourth of the number of participants in the First United Nations Conference on the Law of the Sea—which appeared in article 29 of the Convention on the Territorial Sea and the Contiguous Zone⁶ and in article 34 of the Convention on the High Seas,⁷ conventions which had taken respectively six years and four years to enter into force. It would seem to be reasonable to follow that precedent by opting for a figure of 36 or 37 States, corresponding to one fourth of the number of participants in the present Conference.

16. The third factor, which was specific to the convention, was the number of countries necessary for the constitution of the Council of the International Sea-Bed Authority. According to article 159 of the informal composite negotiating text, the Council was to consist of 36 members of the Authority. If, in the case of the number of ratifications or accessions necessary for the convention to enter into force, the Conference were to opt for a number similar to the number of members of the Council, it might then become necessary to envisage some kind of provisional arrangement to ensure the effective constitution of the Council. Otherwise, it might in practice prove to be impossible to meet the requirements set forth in article 159.

17. His delegation was not, in general, in favour of reservations to the convention, since reservations would not only complicate legal relations between States parties to the convention, but would also undermine the very principle of consensus which was a particular feature of the convention. He also felt that it was unnecessary to insert a special provision concerning the question of the relationship between the present convention and other conventions. It would be sufficient in that respect to follow the general principles set forth in the Vienna Convention on the Law of Treaties.

18. Mr. LEE (Republic of Korea) said that his delegation could accept in principle articles 298 to 303 as formulated in the negotiations text. The entry into force of the convention 30 days after the deposit of the required number of instruments of ratification or accession was also satisfactory. As for the number of instruments of ratification or accession required for the entry into force of the convention, he thought that a figure corresponding to one third of the number of participants in the Conference was a reasonable one from the point of view of securing acceptance of the convention.

19. With regard to the question of reservations, he thought that reservations to a treaty that were incompatible with the

object and purpose of the treaty undermined the whole structure and value of the treaty. His delegation believed in the principle that the fewer exceptions, the better; but, if reservations were permitted, some machinery should be established to check whether a particular reservation was compatible with the convention.

20. Mr. DONIGI (Papua New Guinea) fully supported the proposal by the representative of New Zealand that the final clauses must take into account the aspirations of those dependent territories which had been participating in the Conference in their own right as observers.

21. Mr. KUNDU (India) commended the Conference on the progress it had made in grappling with the issues before it. It was an indication of the considerable measure of agreement reached on the substance of the draft convention that the Conference was now able to discuss the preamble and final clauses.

22. With respect to the preamble, he was satisfied with the basic structure of the preambular paragraphs in the informal composite negotiating text, but emphasized that the objectives of the codification and development of international law should be not only the maintenance of international peace and security but the establishment and implementation of the new international economic order. Furthermore, it might be desirable to consider carefully whether a specific reference should be made in the preamble to the rules of customary international law on matters other than those covered by the convention; reference to such rules had already been made in the body of the text wherever they were to apply. The question of the relationship between the 1958 Conventions on the Law of the Sea and the new convention, and also the question of the residual law, posed great difficulties but he hoped a reasonable solution could be found to them, especially as the new convention would in most cases modify existing law to reflect the new international legal order. For that reason, it might be preferable to delete any reference in the preamble to residual customary international law.

23. As to the final clauses, little difficulty should arise in regard to the normal provisions concerning procedures for ratification or accession, or concerning authentication of the text. The question of entry into force should be dealt with in such a manner that the new convention would be broadly acceptable to a large number of States from each continent and geographical region. That should be the case if the convention were adopted by consensus or near consensus. The same approach should be adopted to the question of review of, or amendments to, the convention.

24. The crucial problems that required careful consideration included, first, the question of reservations. If the convention was adopted by consensus, reservations should normally not be allowed unless it was also agreed by consensus that they could be made to certain specified provisions. If, on the other hand, the convention was adopted by vote, which his delegation hoped would not be the case, care would have to be taken to ensure that the uniform application of the convention was not unduly affected by reservations entered by States. Secondly, there was the question whether international organizations could become parties to the convention and, if so, whether they too could enter reservations, and what the effect of such reservations would be upon their member Governments which might independently become parties to the convention and might also make reservations to it. At the present time, the proposed draft convention was open only to States and not to international organizations. Thirdly, there was the question of the provisional application of the convention pending its entry into force, a question which could be settled only after the substantive provisions had been agreed upon. If the convention was generally acceptable, it should not be difficult to provide for its provisional application, especially in respect of the exploitation of

⁶United Nations, *Treaty Series*, vol. 516, No. 7477, p. 207.

⁷*Ibid.*, vol. 450, No. 6465, p. 83.

the international sea-bed area and its resources; but if it was not adopted by consensus, that aspect would require careful consideration.

Mr. Shehab (Egypt), Vice-President, took the Chair.

25. Mr. JUNOD (Switzerland) said that the uniformity of general multilateral conventions was necessary in order to give full effect to such conventions and, for that reason alone, his delegation was not in favour of a general clause that would authorize States parties to formulate reservations to the future convention. A certain number of specific considerations regarding the future treaty might be added to that general observation. First, the convention would relate to the common heritage of mankind which belonged to all members of the international community and would be administered by common institutions; it was inconceivable that the provisions relating to that aspect could give rise to reservations. In the second place, the many guarantees relative to freedom of maritime communication and transit contained in the convention would be illusory if States could evade their obligations by entering reservations. Thirdly, the future convention would accord rights to certain categories of States, notably land-locked States and geographically disadvantaged States. It would be unfortunate if such rights could be challenged by entering reservations. The success of the future convention would depend then on its complete implementation. A general clause authorizing States parties to enter reservations would jeopardize such implementation, would create inequalities within the different categories of States parties and would be in opposition to the fundamental aims and objectives of the convention.

26. Mr. NAIR (Fiji) said his delegation fully endorsed the statements made by the representative of New Zealand and the observer for the Trust Territory of the Pacific Islands on the question of the self-governing territories in the Pacific region which, as his delegation had explained earlier, exercised full maritime jurisdiction over their waters in their own right. His delegation trusted that the Conference would agree to establish, in the final clauses of the convention, full protection for the rights and obligations of such territories that became parties to it.

27. Mr. BOUGUETAIA (Algeria) said that his delegation would speak later on the final clauses and merely wished to say at the present time that it fully supported the observations made at the 95th meeting by the representative of Iraq and at this meeting by the representative of the Syrian Arab

Republic with respect to the transitional provisions. It was highly important for those provisions to be retained, but he felt that they should be supplemented by some clauses of a more general nature so that they would reflect more clearly the aspirations of the oppressed peoples of the world. He could not emphasize too strongly the need for the new convention to respect the principles of international law and to ensure that the rights and interests of all peoples without exception were protected.

28. Mr. ANDERSEN (Iceland) said that his delegation endorsed the proposals made by the Danish and New Zealand delegations that the European Economic Community and certain self-governing territories in the Pacific region should be allowed to become parties to the convention.

Mr. Marsit (Tunisia), Vice-President, took the Chair.

29. Mr. LALLAH (Mauritius) said he did not think there should be any dispute at the present stage as to whether transitional provisions should be included in the new convention. He fully supported the remarks made by the representative of Algeria to the effect that the convention should include a general provision to ensure that peoples and States that were now dismembered would enjoy the same rights under the convention as other States that had already achieved their independence. On the question of reservations, his delegation agreed with previous speakers who had said that it would be preferable not to permit reservations to the convention because of the undesirable consequences that were likely to ensue, and also because the formulation of reservations would introduce a note of disorder after the arduous efforts made in a decade of negotiation to bring order into the area with which the convention was to deal. If it was eventually decided that reservations would be permitted, the transitional provisions at least should be excluded from that rule.

30. Mr. LOVO-CASTELAR (El Salvador) supported the proposal by the representative of Ecuador for the inclusion, in the final clauses, of a safeguard clause to the effect that national legislation enacted prior to the adoption of the convention with respect to zones extending beyond 12 nautical miles should continue to be applied to the extent that it did not affect the rights and obligations of States in accordance with the convention.

The meeting rose at 5.10 p.m.

97th meeting

Thursday, 11 May 1978, at 11.30 a.m.

President: Mr. H. S. AMERASINGHE.

Tribute to the memory of Mr. Aldo Moro

1. The PRESIDENT said that he felt it was his duty to refer to the ghastly murder by members of the so-called Red Brigades of Mr. Aldo Moro, one of the most prominent political figures in Italy and a statesman of international standing who had been held in the highest esteem.

2. On the evening following the murder, he had issued a press release in which he had stated that, as a former President of the General Assembly of the United Nations and as the President of the Third United Nations Conference on the Law of the Sea, whose task was to establish a new legal order for the oceans and thereby usher in an era of international

co-operation which would contribute substantially to the promotion of international peace and security and friendship and harmony between all nations and all peoples, he felt it was his duty to express his reaction to the murder of Mr. Aldo Moro. He had described the murder of Mr. Moro as an act of barbarism that could not possibly be accepted with resignation by any nation or people in the world, and he had expressed his most profound condolences to the family of the late Mr. Aldo Moro and to the Government and people of Italy.

The representatives observed a minute of silence in tribute to the memory of Mr. Aldo Moro.