

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/C.2/L.14

Netherlands: draft article on delimitation between States with opposite or adjacent coasts

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)*

of the high seas and another part of the high seas, all aircraft shall enjoy equally freedom of transit overflight over such straits. Coastal States may designate special air corridors suitable for overflight by aircraft, and special altitudes for aircraft flying in different directions, and may establish particulars for radio communication with them.

2. The freedom of transit overflight by aircraft over the straits, as provided for in this article, shall be exercised in accordance with the following rules:

(a) Overflying aircraft shall take the necessary steps to keep within the boundaries of the corridors and at the altitude designated by the coastal States for flights over the straits, and to avoid overflying the land territory of a coastal State, unless such overflight is provided for by the delimitation of the corridor designated by the coastal State;

(b) Overflying aircraft shall not cause any threat to the security of the coastal States, their territorial inviolability or political independence; in particular military aircraft shall not in the area of the straits engage in any exercises or gunfire, use wea-

pons of any kind, take aerial photographs, circle or dive down towards ships, take on fuel or engage in other similar acts unrelated to overflight;

(c) Liability for any damage which may be caused to the coastal States of the straits or their citizens or juridical persons by the aircraft overflying the straits shall rest with the owner of the aircraft or other person liable for the damage and, in the event that compensation is not paid by them for such damage, with the State in which the aircraft is registered;

(d) No State shall be entitled to interrupt or suspend the transit overflight of aircraft, in accordance with this article, in the air space over the straits.

3. The provisions of this article:

(a) shall apply to transit flights by aircraft over straits lying within the territorial sea of one or more coastal States;

(b) shall not affect the legal régime of straits over which overflight is regulated by international agreements specifically relating to such straits.

DOCUMENT A/CONF.62/C.2/L.12

Nigeria: draft articles on the territorial sea

[Original: English]
[17 July 1974]

Article 1

(General provisions: nature and characteristics)

Article 2

LIMITS OF THE TERRITORIAL SEA

The territorial sea shall not extend beyond 50 nautical miles from the baseline from which the breadth of the territorial sea is measured.

DOCUMENT A/CONF.62/C.2/L.13

Fiji, Indonesia, Mauritius, Philippines: draft article on the nature and characteristics of the territorial sea

[Original: English]
[18 July 1974]

1. The sovereignty of a coastal State extends beyond its land territory and internal waters, and in the case of archipelagic States, their archipelagic waters, over an adjacent belt of sea defined as the territorial sea.

2. The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.

3. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.

DOCUMENT A/CONF.62/C.2/L.14

Netherlands: draft article on delimitation between States with opposite or adjacent coasts

[Original: English]
[19 July 1974]

1. Where the determination of sea areas under articles . . . (territorial sea, continental shelf, economic zone) by adjacent or opposite States up to the maximum limit would result in overlapping areas, the marine boundaries between those States shall be determined, by agreement between them, in accor-

dance with equitable principles, taking into account all relevant circumstances.

2. Pending such agreement, neither of the States is entitled to establish its marine boundaries beyond the line, every point of which is equidistant from the nearest points on the baselines

from which the breadth of the territorial sea of each State is measured.

3. If a State concerned refuses to enter into or to continue negotiations, or if no agreement is reached within . . . after negotiations have been commenced, the procedure of conciliation of the type provided for in article 66 (b) and the annex of the 1969 Vienna Convention on the Law of Treaties³ may be set in motion by any of the States concerned.

4. If agreement is not reached within . . . after the Conciliation Commission has made its final recommendations, the question of delimitation may be submitted, by any of the States concerned, to the procedure for the compulsory judicial settlement of disputes, provided for in article . . . of the present Convention.

Explanatory note

1. In all cases where, under the new convention on the law of the sea, coastal States would be entitled to extend some form of national jurisdiction over sea areas adjacent to their coasts up to a determined maximum limit, the question of delimitation as between adjacent or opposite coastal States may arise. The present proposal intends to lay down substantive guidelines for the solution of this question (see para. 1 above) as well as procedures for their application (see paras. 1, 3 and 4 above) and interim solutions to be applied pending the final determination of the delimitation lines (see para. 2 above).

2. The normal procedure of delimitation should be by agreement between the States concerned. Paragraph 1 of the present proposal embodies this principle and gives guidelines for the negotiation of such agreement. Among the "equitable principles" mentioned therein figures the principle of equidis-

³ *Official Records of the United Nations Conference on the Law of Treaties, 1968 and 1969* (United Nations publication, Sales No.E.70.V.5), document A/CONF.39/27.

tance, which, in many situations, will result in an equitable delimitation. There are, however, circumstances in which this would not be the case, and paragraph 1 accordingly prescribes the taking into account of all circumstances relevant for reaching an equitable solution.

3. Experience has shown that adjacent or opposite States may need the advice and help of an impartial body of persons in order to reach agreement on delimitation. Similar considerations led the United Nations Conference on the Law of Treaties of 1969 to adopt a compulsory system of conciliation. Paragraph 3 of the present proposal suggests the application of that system—possibly with some adaptation as to the details—to the question of delimitation.

4. Under the Convention on the Law of Treaties the report of the Conciliation Commission, containing its final recommendations, is not binding and, consequently, this procedure cannot in itself produce a final solution of the delimitation question. Accordingly paragraph 4 of the present proposal suggests that, if negotiations and conciliation have finally failed to bring the parties to an agreement, judicial settlement of the dispute should take place, in conformity with the rules to be set out elsewhere in the new convention on the law of the sea.

5. The final settlement of the question of delimitation may take a long time. It would seem essential that pending such settlement—through agreement or through judicial pronouncement—and without prejudice to such final solution, some interim rule should apply. In the first phase of the procedure only an automatically applicable rule could serve the purpose of restraining unilateral measures of the States concerned (see para. 2 of the present proposal).

However, as soon as the second phase of the procedure—i.e. conciliation—has started, under paragraph 4 of the annex to the Vienna Convention on the Law of Treaties, the Conciliation Commission may at any time "draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement".

DOCUMENT A/CONF.62/C.2/L.15

Denmark and Finland: amendment to document A/CONF.62/C.2/L.3

[Original: English]
[22 July 1974]

Amend chapter III, article I, as follows:

Article I

"1. In straits to which this article applies, all ships and aircraft enjoy the right of transit passage, which shall not be impeded.

"2. Transit passage is the exercise in accordance with the provisions of this chapter of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas and another part of the high seas or a State bordering the strait.

"3. This article applies to any strait or other stretch of water which is more than six miles wide between the baselines, whatever its geographical name, which:

"(a) is used for international navigation;
"(b) connects two parts of the high seas.

"4. Transit passage shall apply in a strait only to the extent that:

"(a) an equally suitable high seas route does not exist through the strait; or
"(b) if the strait is formed by an island of the coastal State, an equally suitable high seas passage does not exist seaward of the island.

"5. The provisions of chapter II, part III apply to straits used for international navigation not wider than 6 miles between the baselines.

"There shall be no suspension of innocent passage of foreign ships through such straits."