

Third United Nations Conference on the Law of the Sea

1973-1982

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A/CONF.62/48

Letter dated 10 September 1976 from the representative of the Netherlands to the President of the Conference

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

DOCUMENTS OF THE CONFERENCE

DOCUMENT A/CONF.62/47

Provisional agenda of the fifth session of the Conference

[Original: English]
[21 May 1976]

1. Opening of the session by the President of the Conference
2. Minute of silence for prayer or meditation
3. Adoption of the agenda
4. Organization of negotiations
5. Consideration of the subject-matter referred to in paragraph 3 of General Assembly resolution 3067 (XXVIII) of 16 November 1973
6. 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
7. Signature of the convention and the final act (at Caracas)

DOCUMENT A/CONF.62/48

Letter dated 10 September 1976 from the representative of the Netherlands to the President of the Conference

[Original: English/French]
[14 September 1976]

As representative of the State currently acting as President of the Council of Ministers of the European Communities, I wish to bring to your attention the need for the future law of the sea convention to contain appropriate provisions to allow the European Economic Community to become a contracting party to the convention. In view of the importance of this matter, I would be grateful if you could arrange for this letter to be circulated as an official document.

As regards general information concerning the Community, reference may be made to the annotated directory of inter-governmental organizations concerned with ocean affairs prepared by the United Nations Secretariat (A/CONF.62/L.14), which contains a brief summary of the nature, structure and pertinent powers and functions of the Community. It may be recalled however that, following its institution by the Treaty of Rome of 25 March 1957, and its enlargement in 1973, the European Economic Community consists of nine States, all participating in the Conference: Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom, who are engaged in a process of regional integration.

The Community, which is open to the accession of other European States, has the task of constituting a common market, consisting of the abolition of all restrictions on exchanges between its members and protected by a common customs tariff. In addition it operates through the establishment of common policies and rules in certain fields, such as external trade, agriculture, fisheries and transport.

In order to attain these ends, the member States have agreed to transfer certain of their competences to the institutions of the Community. There are, therefore, various fields in which the competence of the Community has replaced that of the member States.

In these fields the transfer of competence applies also to the external relations of the Community with third States. In this regard the Community has concluded agreements with a very large number of States represented at the Conference, agreements relating to trade, or agreements of association or co-operation going considerably beyond simple trade agreements, one of the examples of the latter being the Lomé Convention, signed in February 1975 with almost 50 African, Caribbean and Pacific States.

As is recalled in the study prepared by the Secretary-General concerning the preamble and final clauses (A/CONF.62/L.13), the Community is, in addition, a party or eligible to become a party to a number of multilateral agreements of a regional character (the Paris and Barcelona Conventions on marine pollution) or of a universal character (the agreements on coffee, cocoa and tin concluded under the auspices of the United Nations).

The future law of the sea convention which the Conference is elaborating will contain both provisions for which the member States are competent and provisions dealing with matters for which competence has been transferred by the member States to the Community. Among these latter provisions reference may be made to those concerning the conservation, management and exploitation of the biological resources of the economic zone. In this respect the Community will shortly engage in negotiations with a number of States concerning agreements on fisheries between each of them and the Community as such.

In view of the transfer of competences which has occurred, the member States of the Community cannot undertake engagements with respect to third States in respect of matters over which the Community has competence. It is accordingly necessary that these engagements should be undertaken by the

Community and this requires that it should become a party to the future convention together with its member States.

This system of joint participation responds furthermore to the legitimate concern of third States to have a legal guarantee that they have before them partners capable of honouring in their regard the totality of obligations envisaged by the Convention.

The possibility for the Community to become a contracting party to the convention requires accordingly to be provided by a particular clause. Reference may be made in this connexion to the study by the Secretary-General previously mentioned and the examples there cited (A/CONF.62/L.13).

In so far as other regional groupings, according to a process analogous to that of the Community, exercise, or may come to exercise, competences in their own name in some of the domains covered by the convention, the formulation of such a clause could be of a general character, as follows:

“Customs unions, communities and other regional economic groupings exercising powers in the areas covered by this Convention may be parties to this Convention.”

It would be possible to combine a formulation on these lines with one which refers specifically to the European Economic Community, as is done in the case of some of the agreements previously concluded and to which reference is made by the Secretary-General in document A/CONF.62/L.13.

Becoming in this way a contracting party to the convention, the Community would naturally be itself entitled to the same rights and be subject to the same obligations as States participating in the instrument, and the institutions of the Community would be obliged to apply the provisions of the

Convention in the exercise of their competences. The transposition to the Community level of the responsibility to apply the convention, or certain provisions thereof, would leave to internal law of the Community the task of regulating relations between member States in the areas concerned. To make this explicit in the convention a suitable clause would be the following:

“Nothing in the present Convention shall prevent the member States of such customs unions, communities or other regional economic groupings from implementing provisions relating, in accordance with the rules governing such customs unions, communities or other regional economic groupings, to the mutual granting to the nationals of such States of national treatment or any other special treatment.”

The present communication is intended to notify you formally of the need for appropriate provisions to be included to enable the Community to participate in the future Convention, together with its member States, and to suggest how the final clauses might take account of this requirement. Additional issues may be presented elsewhere in the text (for example, as regards the application of part IV, concerning the settlement of disputes),¹ to which attention will need to be given in due course.

(Signed) W. RIPHAGEN
Head of the Delegation
of the Netherlands
to the Third United Nations Conference
on the Law of the Sea

¹ 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), document A/CONF.62/WP.9/Rev.1.

DOCUMENT A/CONF.62/49

Report of the Credentials Committee

[Original: English]
[14 September 1976]

1. The Credentials Committee held its 5th meeting on 10 September 1976. Representatives of all the members of the Committee except the Ivory Coast were present.

2. The Committee had before it a memorandum by the Executive Secretary of the Conference, dated 10 September 1976, indicating that as of that date communications had been received concerning 144 States participating in the session.

3. Credentials in the form provided for by rule 3 of the rules of procedure of the Conference had been submitted to the Executive Secretary by the following 111 States: Afghanistan, Albania, Algeria, Angola, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Benin, Bhutan, Botswana, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Cape Verde, Central African Republic, Chile, China, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic Kampuchea, Democratic People's Republic of Korea, Democratic Yemen, Denmark, Dominican Republic, Ecuador, El Salvador, Fiji, Finland, France, Gambia, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guinea, Guinea-Bissau, Haiti, Holy See, Honduras, Hungary, Iceland, India, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kuwait, Lao People's Democratic Republic, Liberia, Libyan Arab Republic, Madagascar, Malawi, Malaysia, Malta, Mauritania, Mauritius, Mexico, Monaco, Morocco, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Niger,

Norway, Oman, Panama, Papua New Guinea, Paraguay, Philippines, Portugal, Qatar, Republic of Korea, Romania, San Marino, Saudi Arabia, Singapore, Somalia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Tonga, Trinidad and Tobago, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United Republic of Tanzania, United States of America, Venezuela, Yugoslavia and Zaire.

4. The appointment of the representatives of two States, Luxembourg and Senegal, had been communicated to the Executive Secretary by telegram from the Ministry of Foreign Affairs concerned.

5. The appointment of the representatives of the following 30 States had been communicated to the Executive Secretary by letter or note verbale: Argentina, Colombia, Egypt, Equatorial Guinea, Ethiopia, Gabon, Grenada, Guatemala, Guyana, Indonesia, Jordan, Lebanon, Lesotho, Mali, Mongolia, Nauru, Nigeria, Peru, Poland, Rwanda, Sierra Leone, Surinam, Togo, Tunisia, Turkey, Uganda, Upper Volta, Uruguay, Western Samoa and Yemen.

6. The delegation of Burundi had signed the Register of the Conference in accordance with rule 40 of the rules of procedure.