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UNITED NATIONS

THIRD CONFERENCE ON THE LAW OF THE SEA

PROVISIONAL

For participants only

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10 September 1974

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Second Session

SECOND COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE FORTY-FIFTH MEETING

Held at the Parque Central, Caracas,
on Wednesday, 28 August 1974, at 11 a.m.

Chairman:	Mr. AGUILAR	Venezuela
later:	Mr. NJENGA	Kenya
Rapporteur:	Mr. NANDAN	Fiji

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Consideration of subjects and issues and related items (continued)

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CONSIDERATION OF SUBJECTS AND ISSUES AND RELATED ITEMS (A/CONF.62/C.2/L.47, L.57, L.62, L.63, L.74, L.75, L.82) (continued)

The CHAIRMAN invited delegations to comment on recent proposals and draft articles submitted to the Committee.

Mr. WISNOEMOERTI (Indonesia), in preliminary comments on document A/CONF.62/C.2/L.63, said that Indonesia was prepared to consider and discuss, with immediately adjacent neighbouring countries, the problem of traditional interests claimed by them in the archipelagic waters. Consultations to that effect had in fact already taken place between the Indonesian Government and the Governments of such neighbouring countries.

His delegation had difficulty with the first draft article in the first place because the provision was applicable to all areas which constituted archipelagic waters and the territorial sea, over which the archipelagic State had sovereignty. Secondly, it placed the archipelagic State under the obligation to give special consideration to the interests and needs of its neighbours, without regard to whether those interests and needs were traditional, legitimate or reasonable. Thirdly, it imposed an obligation on the archipelagic State to enter into an agreement with any neighbouring State at the request of the latter. Fourthly, the draft article did not qualify which neighbouring country was entitled to accommodation by the archipelagic State. The omission of the element of adjacency in that connexion would create difficulties for the archipelagic State. Finally, the elements of reciprocity and equality included in the draft article in order to accommodate the interests of neighbouring countries with respect to the living resources of the archipelagic waters and the territorial sea, might create problems for the archipelagic State.

The second draft article needed clarification. For example, his delegation wondered what was meant by the words "sole benefit". It also wondered what types of ships had to be accorded the right of passage through the archipelagic waters outside the designated sealanes.

His Government, in a spirit of good neighbourliness and regional co-operation, was prepared to continue consultations with the Governments of its neighbours, including Thailand, in order to seek a just solution to the problem.

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Mr. NITTI (Italy), referring to proposals on the régime of islands, said that the 1958 Geneva Conventions had provided a simple and radical solution to the problem of the régime of waters, soil and subsoil of the sea adjacent to islands. Article 10 of the Convention on the Territorial Sea and the Contiguous Zone and article 1 of the Convention on the Continental Shelf laid down the principle that islands should be assimilated to other territories of the State. Furthermore, the first of those proposals included a definition broad enough to include all natural land extensions which might be in the high seas.

With respect to the problem of the delimitation of the ocean space between States, no difference had been established by the Geneva Conventions regarding islands and the Conventions therefore applied to them. Islands should be treated like any other territory of the State, the equidistant line being, in principle, the equitable demarcation line.

In the Sea-Bed Committee, some delegations had been in favour of a revision of the system adopted by the Geneva Conventions. Proposals had been advanced with a view to classifying islands into various categories because of their different situations. His delegation had already indicated the reasons why it believed that islands should not be deprived of their territorial sea, their continental shelf or their future economic zone (A/CONF.62/C.2/SR.40). In any event, it could not accept any suggestion aimed at depriving islands of their ocean space or even calling into question their legal status by imposing abstract formulas incompatible with the principles of international law, which required that all elements which constituted the territory of a State should have the same rights and which ensured respect for a State's sovereignty and territorial integrity.

The proposals which were aimed at modifying the legitimate rights of islands with respect to the delimitation of maritime areas between adjacent or opposite States seemed to have been submitted by States which had delimitation problems of a bilateral nature with other neighbouring States. That had led some of them to lose sight of the universal nature of the Conference. Those circumstances should be taken into account when the proposals were being considered.

Mr. VALENCIA RODRIGUEZ (Ecuador), referring to documents A/CONF.62/C.2/L.47 and L.57, said that Ecuador, which had a 200-mile territorial sea over which it exercised full sovereignty, held that all the living and non-living

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(Mr. Valencia Rodriguez, Ecuador)

resources in that zone were under its national jurisdiction. That affirmation should not be interpreted to mean that Ecuador would not take part in international activity to promote research, conservation and development of the resources. The law of the sea could be codified only on the basis of the legitimate rights of the coastal State and when appropriate, of the international community. Any attempts to justify rights of third States over the living resources of the coastal State's seas were clearly intended to facilitate plunder by the fishing Powers which, in the past, had profited from the riches of the sea without regard for the food requirements and other needs of the peoples of the coastal State or for the under-utilization of marine resources. The great Powers were exploiting fish resources with little concern for scientific research and even less for the conservation of species, and were merely seeking to obtain maximum profits from those resources without taking into consideration the economic and social needs of developing countries - all that on the pretext of protecting the over-all interests of the international community.

It was not a matter of limiting the catch according to the capacity of the coastal State. If the coastal State had full sovereignty over the resources of its seas, it would be able to feed its people and develop its industries without prejudice to third countries being able to fish, and benefit from, the remaining available resources under the regulations of the coastal State. Thus, the coastal State would be able to fulfil its responsibility to the international community without allowing itself to be victimized by what were tantamount to flagrant acts of piracy. No attempt to whittle down the rights of the coastal State within its territorial sea could be in accordance with justice. Such attempts would, on the contrary, not only run counter to the development of third world countries, but would be incompatible with the maintenance of peace, friendship and co-operation.

Ecuador was firmly opposed to any claim that would infringe its rights over all the species in its 200-mile territorial sea. Nor could it accept that the basis for the organization of the fisheries régime should be the so-called division of species whereby some would be termed "international" simply because of their migratory habits. It was true that highly migratory species, such as the tuna, while in international waters should come under the jurisdiction of the international authority. However, it was also true that they should come under the sovereignty of a State when they entered that State's waters and should be fished under standards established by that coastal State, which would take account relevant

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recommendations of international bodies. The fish in the territorial sea were under the indisputable sovereignty of the coastal State and while international co-operation was necessary, it should not take precedence over or supersede sovereign rights. Indeed, it was necessary for the conservation and development of species and their utilization first for the benefit of coastal States and then of third States in conformity with coastal State regulations.

Mr. YANGO (Philippines) said that his delegation appreciated the fact that the proposal contained in document A/CONF.62/C.2/L.67 recognized and accepted the concept of historic waters. His delegation also supported that concept and had submitted proposals to the Committee (A/CONF.62/C.2/L.24/Rev.1) on that subject.

His delegation had introduced similar proposals (A/AC.138/SC.II/L.46) in the Sea-Bed Committee, and had stated clearly that the Philippines exercised and would continue to exercise sovereignty over historic waters where the United States of America and Spain had previously exercised sovereignty over a long period, without prejudice to arrangements or agreements which his Government might freely enter into in special circumstances. His delegation continued to adhere to that position.

Mr. TUNCEL (Turkey) said that together with the delegation of Tunisia, his delegation had taken the initiative in the Sea-Bed Committee in presenting proposals concerning delimitation of the ocean space and the régime of islands which had met with a negative reaction from other delegations. However, during the current session many delegations had referred to those subjects in the course of the general debate. He hoped that Governments would maintain their interest in the matter between sessions.

The representative of Italy had confirmed the views of his delegation with regard to the régime of islands. His statement contained some original ideas which the Turkish delegation would consider before the next session. The representative of Italy had referred to the predominance of bilateral rather than international agreements in the case of islands and had stated that as the Geneva Conventions did not mention special circumstances islands should be treated as part of the national territory of a State. Realities dictated the need for bilateral agreements which were envisaged elsewhere in the Geneva Conventions. He hoped that the Italian delegation would reconsider its position with regard to the future régime of islands.

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Mr. ANDERSEN (Iceland) requested the Secretary to ensure that sufficient copies of the documents containing consolidated texts were made available to delegations, and called on the representative of FAO to request that organization to provide a revised version of the document on the limits and status of the territorial sea, exclusive fishing zones, fishery conservation zones and the continental shelf. Such a document would be a useful basis for the future work of the Committee.

The CHAIRMAN took note of those two requests by the representative of Iceland.

Mr. ARIAS SCHREIBER (Peru) said that his delegation had been particularly interested in the proposals submitted by 17 African countries on the exclusive economic zone (A/CONF.62/C.2/L.82). Although his delegation had adopted a different position, it would take note of the valuable elements which had been included in those draft articles, and would study them further at the next session of the Conference. In the meantime, he wished to make a few preliminary remarks.

Firstly, his delegation considered that the definition of the concept of the exclusive economic zone in article I of that document should mention that the zone was contiguous to the high seas or international sea. Bearing in mind that the 200-mile exclusive economic zone would in most cases include the whole of the continental shelf, his delegation considered that in article II it was essential to adopt the formulation used in the Convention on the Continental Shelf and to include the concept of sovereignty over the sea, the sea-bed and subsoil thereof for the purpose of regulating the exploration and exploitation of the renewable and non-renewable resources and for the protection and conservation of the living resources. It was important to reproduce that wording in order to preserve intact a right which was already recognized with regard to the continental shelf since, as the representative of Tanzania had stated, sovereignty applied not to a resource but to the space in which the resource was found.

As the future Convention would remain in force for a considerable period of time, he expressed the view that articles III and IV should contain provisions concerning the regulation of other economic uses of the seas and the exercise of "the residual rights of the coastal State" to protect interests related to the purposes cited in the articles from possible uses and abuses of the sea.

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(Mr. Arias Schreiber, Peru)

Referring to article V, he drew the attention of the sponsors to the fact that the régime of freedom of navigation, overflight and the laying of cables and submarine pipelines, as contained in that article did not mention the duty of ships in transit through the exclusive economic zone to behave in a peaceful manner and to abstain from activities which might endanger the coastal State, such as exercises or practice with weapons or explosives, the launching or taking on board of military devices, the embarkation or disembarkation of persons or materials without the consent of the coastal State or any act of propaganda, espionage or interference with communications systems or any other activity not directly related to transit. While recognizing the right of ships of other States to free transit through the economic zone, provisions should be included to ensure that such ships complied with corresponding obligations in respect of the economic interests of the coastal State and that transit was for peaceful purposes only. While the powers of the coastal State should not be as extensive as those it held under the régime of innocent passage, some of the elements of that régime should be included as obligations of the transit State. His delegation considered that it was necessary to distinguish between the régime of innocent passage, applicable in an area in proximity to the coast, the régime of free transit applicable from the seaward limit of that area to the 200-mile limit and the régime of freedom of navigation and overflight applicable in the international sea.

Finally, with regard to article IX, his delegation considered that all activities by other States in the economic zone, including scientific research, and not merely those relating to the exploration and exploitation of resources, should be conducted for peaceful purposes only. That article could not be intended to prevent the coastal State, within its exclusive economic zone, from carrying out activities necessary to its security, including naval manoeuvres or exercises, but rather to prevent other States from carrying out such activities in that zone.

Mr. Njenga (Kenya) took the Chair.

Mr. CEASU (Romania) observed that the meeting had been arranged to allow delegations to comment on recently introduced proposals. Yet, contrary to the agreed procedure, one délegation had taken advantage of the occasion to reopen the debate on the régime of islands, citing the 1958 Geneva Conventions in support of its general position. It had therefore placed itself in a privileged position, since

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(Mr. Ceasu, Romania)

other delegations would not be able to reply at the current session. In any event, the main purpose of the Conference was to establish a new law of the sea based on equity and acceptable to all States, not to comment on the provisions of the 1958 Geneva Conventions, some of whose provisions were manifestly unfair.

The CHAIRMAN said that he could do no more than appeal to delegations to show discretion and not to revert to issues which had already been discussed; he could not prevent them from making any observations they regarded as relevant.

Mr. ANDERSON (United Kingdom) observed that the proposals in documents A/CONF.62/C.2/L.62 and L.75 dealt *inter alia* with the delimitation of the continental shelf and the economic zone between adjacent and opposite States and put forward the concept of applying equitable criteria for the purpose of delimiting the continental shelf in the case of islands. The sponsors claimed that the application of such criteria would not be an innovation since equity constituted the fundamental rule of international law in the matter of delimitation. His delegation's position in that respect was similar to that of the Italian delegation. The United Kingdom was a party to the 1958 Geneva Conventions on the Territorial Sea and the Continental Shelf. It would be recalled that article 6 of the latter Convention specified three criteria for delimiting the boundaries of the continental shelf, without stating that islands should be treated as a special case. The present law, as set forth in that Convention, remained in force as between States parties throughout the deliberations of the Conference until it was superseded. Proposals such as those contained in documents A/CONF.62/C.2/L.62 and L.74 could be regarded as proposals *de lege ferenda*, not *lex lata*. Accordingly, they were not relevant to existing questions of delimitation under consideration at the present time and in the coming months.

Mr. NITTI (Italy) said that his delegation had not intended to reopen the general discussion on islands, but rather to prepare the way for reaching a constructive solution to the problem of the delimitation of the marine space of islands at the following session. In his delegation's opinion, the only equitable solution was the equidistance method, provided that it took account of special circumstances.

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Mr. MANGAL (Afghanistan), speaking on a point of order, said that if it was the Committee's wish to reopen a general discussion, his delegation would also like to make its position clear. However, it felt that it was not an appropriate time for any delegation to go into the details of complex issues.

The meeting rose at 11.55 a.m.

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