UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.135/1/Add.10
20 August 1968
ENGLISH
ORIGINAL: ENGLISH/FRENCH

AD HOC COMMITTEE TO STUDY THE PEACEFUL USES OF THE SEA-BED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION

NOTE BY THE SECRETARY-GENERAL

In addition to the replies of Member Governments under operative paragraph 3 (a) of General Assembly resolution 2340 (XXII), communicated to the Ad Hoc Committee in documents A/AC.135/1 and Add.1 to 9, the Secretary-General has now received a reply from the Government of Italy.

This reply is reproduced in the present document.

The delegation of Italy to the third session of the Ad Hoc Committee on the Sea-bed presents its compliments to the Secretariat and, following the Italian memorandum of 16 July 1968,[1] has the honour to submit a memorandum containing further views of the Italian delegation on the legal aspects of the question of the internal and marginal seas.

Rio de Janeiro, 20 August 1968

1/ Reproduced in document A/AC.135/1/Add.9.

MEMORANDUM OF THE ITALIAN DELEGATION

1. At the Ad Hoc Committee's second session the Italian delegation pointed out that there were appreciable differences between the internal and marginal seas, on the one hand, and the oceans, on the other.

The Italian delegation subsequently submitted a technical memorandum on the subject to the Ad Hoc Committee through the Secretariat.

The aim of the present memorandum is to present, as a complement to the technical document, the legal points which arise on the same subject.

2. The question is whether the differences noted between the oceans and the internal seas are a sound enough basis to provide legal justification for treating the two types of area differently.

Two lines of reasoning indicate that the answer to this question is in the affirmative.

3. In the first place, the differences described in the technical memorandum are very closely linked to the activities and practical means mentioned in resolution 2340 (XXII).

That resolution is concerned with the study of the peaceful exploitation of the sea-bed and the ocean floor, the prohibition of certain activities, and the possibility of promoting other activities and laying down regulations for them.

The forms and characteristics of all these activities may be different according as they are carried on in the oceans or in the internal or marginal seas.

In the following observations, the term "internal sea" is used in the broad sense to indicate the sea areas which, although not normally defined as "internal seas", undoubtedly have characteristics which differentiate them from the oceans.

All that is necessary, in order to understand the logical basis for a distinction between the oceans and the internal seas, is to consider, as an example, the different forms that the very important problem of water pollution, or that of obstacles to navigation, may take according as they arise in the oceans or in an internal sea.

The fact that there is a link between the characteristics differentiating the two types of area and the practical aspects of the problems under study constitutes the basis for the following comments, which are intended to provide legal justification for differential treatment.

4. The necessity of making the relevant rules flexible enough to guarantee in every case the result which will be most consistent with the general requirements of equity has always been recognized in international law.

These requirements can be met only if the general rules are of such a kind as to permit any necessary adjustments of and any departures from them that may seem advisable in particular circumstances. It is a well-known fact that the same treatment may sometimes result in actual discrimination if it is applied to situations which are fundamentally different in kind. In such cases, differential treatment, far from being discriminatory, may be a necessity, precisely to prevent de facto discrimination. This is a well-known concept of international law, which has not only been established in the jurisprudence of the International Court of Justice but has been widely applied in international relations.

5. In the particular case of the legal régime of the sea, many examples may be cited of treaties recognizing the need to allow departures from the general rules, in special circumstances, for the specific purpose of restoring the balance in the light of particular historical, geographical, technical and other circumstances.

In this connexion, it is not necessary to do more than recall the fact that it has been found impossible to apply the usual criteria for the delimitation of territorial waters in cases involving special historical or geographical circumstances, such as indentations or bays.

As to the continental shelf, article 6 of the Geneva Convention, which lays down the basic rules for determining the boundaries of the continental shelf when it is adjacent to neighbouring States, explicitly recognizes that these rules cannot be applied when "another boundary line is justified by special circumstances."

The principle of international law according to which historical and geographical differences imply differences in legal treatment is confirmed by the jurisprudence of the Hague Court in the case of the régime of the sea. The judgement of the Court in the Norwegian fisheries case, accepting special rules for delimiting the territorial sea in the skjaergaard zone, justified this arrangement by stating that that the solution was dictated by geographical facts.

6. It is therefore permissable to conclude that the adoption of differential treatment when the geographical facts are such as to call for such treatment is not only unquestionably justified but is in fact mandatory under international law.
