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COMMITTEE ON THE PEACEFUL USES OF THE
SEA-BED AND THE OCEAN FLOOR BEYOND
THE LIMITS OF NATIONAL JURISDICTION

Texts of the Montevideo Declaration, of the relevant portion of the Lusaka Declaration and of the report of the Sub-Committee on the Law of the Sea of the Asian-African Legal Consultative Committee

The texts of the Montevideo Declaration, of the relevant portion of the Lusaka Declaration and of the report of the Sub-Committee on the Law of the Sea of the Asian-African Legal Consultative Committee, adopted at the latter's twelfth session held in Colombo from 18 to 27 January 1971, are reproduced below in accordance with the decision taken by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jursidiction at its 60th meeting on 26 March 1971.

MONTEVIDEO DECLARATION ON THE LAW OF THE SEA

(8 May 1970)

The States represented at the Montevideo Meeting on the Law of the Sea,

Recognizing that there exists a geographic, economic and social link between the sea, the land, and its inhabitant, Man, which confers on the coastal peoples legitimate priority in the utilization of the natural resources provided by their marine environment,

Recognizing likewise that any norms governing the limits of national sovereignty and jurisdiction over the sea, its soil and its subsoil, and the conditions for the exploitation of their resources, must take account of the geographical realities of the coastal States and the special needs and economic and social responsibilities of developing States,

Considering that scientific and technological advances in the exploitation of the natural wealth of the sea have brought in their train the danger of plundering its living resources through injudicious or abusive harvesting practices or through the disturbance of ecological conditions, a fact which supports the right of coastal States to take the necessary measures to protect those resources within areas of jurisdiction more extensive than has traditionally been the case and to regulate within such areas any fishing or aquatic hunting, carried out by vessels operating under the national or a foreign flag, subject to national legislation and to agreements concluded with other States,

That a number of declarations, resolutions and treaties, many of them inter-American, and multilateral declarations and agreements concluded between Latin American States, embody legal principles which justify the right of States to extend their sovereignty and jurisdiction to the extent necessary to conserve, develop and exploit the natural resources of the maritime area adjacent to their coasts, its soil and its subsoil,

That, in accordance with those legal principles the signatory States have, by reason of conditions peculiar to them, extended their sovereignty or exclusive rights of jurisdiction over the maritime area adjacent to their coasts, its soil and its subsoil to a distance of 200 nautical miles from the baseline of the territorial sea,

That the implementation of measures to conserve the resources of the sea, its soil and its subsoil by coastal States in the areas of maritime jurisdiction adjacent to their coasts ultimately benefits mankind, which possesses in the oceans a major source of means for its subsistence and development,

That the sovereign right of States to their natural resources has been recognized and reaffirmed by many resolutions of the General Assembly and other United Nations bodies,

That it is advisable to embody in a joint declaration the principles emanating from the recent movement towards the progressive development of international law, which is receiving ever-increasing support from the international community,

Declare the following to be Basic Principles of the Law of the Sea:

1. The right of coastal States to avail themselves of the natural resources of the sea adjacent to their coasts and of the soil and subsoil thereof in order to promote the maximum development of their economies and to raise the levels of living of their peoples;

2. The right to establish the limits of their maritime sovereignty and jurisdiction in accordance with their geographical and geological characteristics and with the factors governing the existence of marine resources and the need for their rational utilization;

3. The right to explore, to conserve the living resources of the sea adjacent to their territories, and to establish regulations for fishing and aquatic hunting;

4. The right to explore, conserve and exploit the natural resources of their continental shelves to where the depth of the superjacent waters admits of the exploitation of such resources;

5. The right to explore, conserve and exploit the natural resources of the soil and subsoil of the sea-bed and ocean floor up to the limit within which the State exercises its jurisdiction over the sea;

6. The right to adopt, for the aforementioned purposes, regulatory measures applicable in areas under their maritime sovereignty and jurisdiction, without prejudice to freedom of navigation by ships and overflying by aircraft of any flag.

Furthermore, the signatory States, encouraged by the results of this Meeting, express their intention to co-ordinate their future action with a view to defending effectively the principles embodied in this Declaration.

This Declaration shall be known as the "Montevideo Declaration on the Law of the Sea".

LUSAKA DECLARATION ON PEACE, INDEPENDENCE, DEVELOPMENT CO-OPERATION AND DEMOCRATIZATION OF INTERNATIONAL RELATIONS AND RESOLUTIONS OF THE THIRD CONFERENCE OF HEADS OF STATE OR GOVERNMENT OF NON-ALIGNED COUNTRIES

(8-10 September 1970)

(excerpt)

STATEMENT ON THE SEA-BED

The Conference of Heads of State and Government is aware that developing technology is making the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction accessible and exploitable for scientific, economic, military and other purposes. It is convinced that this area should be used exclusively for peaceful purposes and that the potential wealth of the area and its resources should be developed and used for the benefit of mankind as a whole.

The Conference is convinced that rapid progress in this direction is essential if conflict and tension are to be removed from the area and if its resources are to be used for the benefit of mankind. In this connexion the Conference regrets to note that the United Nations Committee on the Sea-Bed has not yet been able to submit a draft Declaration to the General Assembly and expresses the hope that the General Assembly will still be able to adopt such a Declaration to mark the celebration of the twenty-fifth anniversary of the United Nations. In the view of the Conference of Heads of State and Government, such a Declaration should, inter alia, reflect the following basic principles:

(1) The sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction, as well as the resources of the area, are the common heritage of mankind.

(2) The area shall not be subject to national appropriation by any means. No State shall exercise or claim sovereign right over any part of it. Nor shall any State or person claim, exercise or acquire rights with respect to the area or its resources incompatible with these basic principles and the international régime to be established.

(3) The area shall be used exclusively for peaceful purposes.

(4) The exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether land-locked or coastal, and taking into account the special needs and interests of the developing countries.

(5) On the basis of these principles an international régime, including appropriate international machinery to give effect to its provisions, should be established by an international treaty. The régime should provide for the orderly development and rational management of the area and its resources and ensure the equitable sharing by the international community in the benefits derived therefrom. It should also make adequate provisions to minimize fluctuation of prices of land minerals and raw materials that may result from such activities.

The Conference of Heads of State and Government also supports the convening at an early date of a conference on the Law of the Sea, after due preparations have been made for it by a preparatory committee, to review the régimes of the high seas, the continental shelf, the territorial sea and contiguous zone, fishing and conservation of living resources of the high seas, particularly in order to arrive at a clear, precise and internationally accepted definition of the area of the sea-bed and ocean floor which lies beyond national jurisdiction, in the light of the international régime to be established for that area. These questions should be dealt with together in a comprehensive manner rather than piecemeal.

ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE,
TWELFTH SESSION, COLOMBO

(18 to 27 January 1971)

REPORT OF THE SUB-COMMITTEE ON THE LAW OF THE SEA

Chairman:	Mr. T.O. Elias	(Nigeria)
	Mr. D. Ogundere	(Nigeria)
Rapporteur:	Mr. C.W. Pinto	(Ceylon)

I. Organization of work

The Sub-Committee first took up the question whether the various issues of the law of the sea ought to be divided among two or more working groups. It was agreed that, at least initially, all issues relating to the law of the sea should be considered by the entire Sub-Committee, and that one or more rapporteurs could be appointed in respect of those issues.

The delegation of Malaysia proposed that in view of the contribution made by Ceylon in the United Nations towards progress on principles governing the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction, a member of the delegation of Ceylon be appointed Rapporteur on that subject. On the proposal of the delegation of Iran, the Sub-Committee agreed that a member of the delegation of Ceylon should act as Rapporteur on all subjects relating to the law of the sea.

The Chairman placed before the Sub-Committee a list of the subjects for discussion and it was agreed that the Sub-Committee should consider them in groups as follows, without prejudice to the order in which any particular subject might be taken up:

1. The extent of the territorial sea, including the matter of rights of coastal States in respect of fisheries, beyond the territorial sea.

2. Exploration and exploitation of the sea-bed:

(a) The limits of national jurisdiction over the sea-bed, including a concept of "trusteeship" over the continental margin as proposed by the United States;

(b) The type of régime to govern the sea-bed and the ocean floor beyond the limits of national jurisdiction and types of international machinery.

3. International straits.

4. Islands and the archipelago concept.

5. Preservation of the marine environment and other questions.

II. The extent of the territorial sea, including rights of coastal States in respect of fisheries and zones of economic jurisdiction beyond the territorial sea

In the course of the discussion some delegations urged that a functional approach be taken to the question of establishing jurisdictional limits. Thus, it was suggested that different limits might be established for different purposes. However, the endeavour should be to arrive at uniform limits for each type of jurisdiction. One delegation was of the view that a coastal State should not have exclusive fishery jurisdiction beyond its territorial sea.

The Sub-Committee, with the exception of a very few delegations considered that at the present time any State would be entitled under international law, to claim a territorial sea of twelve miles from the appropriate baseline. The majority of delegations indicated that a State had the right to claim certain exclusive rights to economic exploitation of the resources in the waters adjacent to the territorial sea in a zone the maximum breadth of which should be subject to negotiation. Most delegations felt able to accept twelve miles as the breadth of the territorial sea, while supporting, in principle, the right of a coastal State to claim exclusive jursidiction over an adjacent zone for economic purposes.

A few delegates emphasized that in their view the maximum breadth of the territorial sea could be twelve miles subject to certain conditions, and that it would not be to the interests of all countries in maximum utilization of the living resources of the sea to establish an exclusive jurisdictional zone for economic purposes beyond the twelve miles territorial sea. One of those delegates further indicated that it would have no objection to conferring on developing countries which are coastal States a special status in relation to exploitation of the living resources of their adjacent seas.

One delegation urged that problems of fisheries and fish conservation of living marine resources be approached on a regional or ocean basis, the States in the region or ocean being encouraged to enter into agreements among themselves regulating the rights and obligations of each other in relation to fishing, free of outside interference.

III. Exploration and exploitation of the sea-bed:

(a) The limits of national jurisdiction over the sea-bed, including a concept of "trusteeship" over the continental margin as proposed by the United States

The Sub-Committee discussed the question whether to consider first the proposed international régime for the sea-bed beyond national jurisdiction, or the limits of national jurisdiction over the sea-bed.

Some delegations suggested that the Sub-Committee should commence its work by considering the extent of a coastal State's jurisdiction over the sea-bed adjacent to its coast, or continental shelf, since in their view the nature of the international régime to be established would depend to a great extent on the limit of national jurisdiction.

Some delegations urged that the question of the limits of national jurisdiction over the continental shelf be taken up only after there had been a discussion of the international régime for the sea-bed beyond national jurisdiction such as was envisaged in the General Assembly's Declaration of 17 December 1970. In their view there was a vital connexion between the character of that régime (including the international machinery) and the question of limits: if agreement could be reached on a strong organization which offered a reasonable prospect of providing real benefits to the developing countries in accordance with a scheme which would fairly take into account the needs of those countries, there might be support for relatively narrow limits of national jurisdiction. On the other hand, if the machinery contemplated were to lack comprehensive powers or were for some other reason unable to discharge such functions acceptably, then it might become necessary to consider recognizing much wider limits of national jurisdiction so as to allow coastal States themselves maximum opportunity for exploitation.

Following a discussion of the relative merits of depth, distance, and a combination of both factors as criteria for measuring the limit of the continental shelf, several members, while expressing a preference for a distance criterion on the ground that a simple depth criterion might be unfair to States with narrow continental shelves, indicated that they would prefer to leave the matter open for the time being until they had been able to gather more scientific data and

had studied the full implications of using each particular criterion. Whatever criterion or figure was arrived at, it must be related to the equities of the situation and take account of a variety of factors, including the nature of the proposed international machinery.

A few delegations indicated their clear preference for a depth criterion of say, 200 metres, which had been accepted and acted upon by many States over the years. Some delegations objected to limiting national jurisdiction to the 200 metre isobath because the Geneva Convention on the Continental Shelf had already admitted a deeper limit beyond that depth and because there are parts of the sea-bed area deeper than the 200 metre isobath but surrounded by areas of lesser depth of one or two States which in their view should be under national jurisdiction, primarily on the ground of propinquity. It was pointed out that some States had in fact authorized exploitation of their adjacent sea-bed areas on the assumption that the depth plus exploitability criterion prescribed in article 1 of the Geneva Convention on the Continental Shelf was settled law, and that it would be unfair and unrealistic to expect States to abandon that criterion altogether, even though its revision in some respects might be necessary.

Some delegations propose that States should abandon the depth plus exploitability criterion for the limits of national jurisdiction and consider recognizing a limit of 200 miles to be measured from the coastal States' baseline as this, in their view, was the most equitable criterion and hence most likely to command the support of the majority of the international community. A number of members were inclined to view the proposal favourably and considered it desirable to study the concept further.

Other delegations pointed out that while they might favour the distance criterion in preference to a depth criterion if very wide limits of national jurisdiction were to be recognized, the remaining area of the sea-bed that may be placed under the control of the international authority would be at such depth as to be impossible to exploit in the near future. This would endanger the financing and viability of any proposed machinery, or permit the creation of only machinery with restricted powers and functions.

The United States proposal for a "trusteeship" area that might extend from the 200 metre isobath to the end of the continental margin was examined at length.

It was pointed out that the wide powers and extensive benefits which would be conferred on a "trustee" coastal State under that system, would be incompatible with the status of the area and its resources as the common heritage of mankind. Moreover, it appeared to be inconsistent with the basic principles of trusteeship, as that concept was known in private law systems, in that the trustee and not the beneficiaries appeared to receive the bulk of the benefits of exploitation of the "trusteeship area".

IV. Exploration and exploitation of the sea-bed:

(b) The type of régime to govern the sea-bed and the ocean floor beyond the limits of national jurisdiction and types of international machinery

The Sub-Committee considered that all the basic principles contained in the Declaration of 17 December 1970, e.g., the common heritage concept, non-appropriability, peaceful uses, benefit-sharing, etc. should be duly defined and incorporated in the Convention on the international régime, thus placing their legally binding force beyond controversy.

The majority of delegations were in broad agreement that the international authority to be set up should have a range of powers along the following lines:

(i) To explore the international sea-bed area and exploit its resources for peaceful purposes by means of its own facilities, equipment and services, or such as are procured by it for the purpose;

(ii) To issue licenses to Contracting Parties, individually or in groups, or to persons, natural or juridical, under its or their sponsorship with respect to all activities of exploration of the international sea-bed area and the exploitation of its resources for peaceful purposes, and related activities, subject to such terms and conditions, including the payment of appropriate fees and other charges, as the authority may determine;

(iii) To provide for the equitable sharing by Contracting Parties of raw materials obtained from the international sea-bed area, funds received from the sale thereof, and all other receipts, as well as scientific information and such other benefits as may be derived from the exploration of the international sea-bed area and the exploitation of its resources;

(iv) To establish or adopt in consultation, and where appropriate, in collaboration with the competent organ of the United Nations, and with the specialized agencies concerned, measures designed to minimize and eliminate fluctuation of prices of land minerals and raw materials that may result from the exploitation of the resources of the international sea-bed area, and any adverse economic effects caused thereby;

(v) To encourage and assist research on the development and practical application of scientific techniques for the exploration of the international sea-bed area and the exploitation of its resources, and to perform any operation or service useful in such research;

(vi) To make provision in accordance with the Convention for services, equipment and facilities to meet the needs of research on the development and practical application of scientific techniques for the exploration of the international sea-bed area and the exploitation of its resources for peaceful purposes;

(vii) To foster the exchange of scientific and technical information on the peaceful uses of the international sea-bed area and its resources;

(viii) To promote and encourage the exchange and training of scientists and experts in the field of exploration of the sea-bed and the exploitation of its resources;

(ix) To establish and administer safeguards designed to ensure that materials, services, equipment, facilities and information made available by the authority or at its request or under its supervision or control are not used in such a way as to further any military purpose;

(x) To establish and adopt, in consultation and, where appropriate, in collaboration with the competent organ of the United Nations and with the specialized agencies concerned, standards of safety for protection of health and minimization of danger to life and property, and on the protection of the marine environment as a whole, and to provide for the application of these standards to its own operations as well as to all other operations authorized by it or under its control or supervision;

(xi) To acquire or establish any facilities, plant and equipment useful in the carrying out of its authorized functions, whenever the facilities, plant and equipment otherwise available to it are inadequate or available only on terms it deems unsatisfactory; and

(xii) To take any other action necessary to give effect to the provisions of the Convention.

Several delegations emphasized that in their view the international machinery to be set up to administer the proposed international régime governing the sea-bed beyond national jurisdiction should have comprehensive powers and functions. The machinery should have the capacity to carry out exploration and exploitation activities on its own, even though in the initial stages of its existence it might not be in a position to exercise that function. A few delegations expressed doubts regarding the advisability of conferring the power of direct exploitation on the international machinery, and expressed reservations regarding some of the functions outlined above.

V. International straits

It was acknowledged by all delegations that if it were generally accepted that each State had the right to establish a territorial sea twelve miles wide, several if not all States were likely to exercise that right without delay. As a result, several straits twenty-four miles or less in width would fall under the exclusive jurisdiction of the riparian States concerned.

Several delegations referred to recent suggestions for safeguarding the right of passage through and over straits used for international navigation which might thus fall within the territorial sea of the riparian States. According to those suggestions, in order to safeguard freedom of passage through "straits used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State", the riparian States would be required so to delimit their territorial sea as "always to provide a corridor of high seas suitable for transit by all ships and aircraft".

Several delegations took the view that where a strait or part thereof consisted of the territorial sea of the riparian States, the latter must retain under all circumstances a special authority to control navigation through or above that strait for economic or security purposes or for purposes connected with preservation of the marine environment. For those reasons they would be

unable to accept the "corridor of high seas" concept. They were also unable to accept the definition of the term "international strait" implied in those suggestions. They were likewise unable to accept a more recent suggestion whereby "all ships and aircraft in transit shall enjoy the same freedom of navigation and overflight, for the purpose of transit through and over such straits, as they have on the high seas".

While all delegations were in agreement that a strait used for international navigation should in times of peace remain free for the innocent passage of merchant ships of all countries, subject to rules and regulations of the riparian States, many delegations rejected both the "corridor of high seas" and "free transit" concepts. A few delegations expressed themselves in favour of the "free transit" concept.

VI. The archipelago concept

The delegations of Indonesia and the Philippines requested the Committee to consider the problems of archipelagic countries. They urged that archipelagic countries like Indonesia and the Philippines, which consist of thousands of islands, had a special interest in, and relation to, the waters between and around those islands for historical, geographical, ethnological, political and economic reasons, as well as for reasons of national defence and security. In their view, an archipelagic country of this kind was entitled to measure the breadth of its territorial sea from baselines which would guarantee the unity of the archipelago, viz., from baselines connecting the outermost points of the outermost islands of the archipelago. The right of innocent passage from one part of the high seas to another through the waters of an archipelagic country would be guaranteed by that country subject to any rules and regulations it might enact in that regard.

Several delegations expressed their appreciation to the delegations of Indonesia and the Philippines for their elaboration of the archipelago concept. They agreed that sympathetic consideration should be given to the archipelago concept as outlined by the members from Indonesia and the Philippines.

Some delegations expressed support for the concept.

One delegation indicated that it was not in a position to accept the archipelago concept.

VII. Other questions

Although it was recognized that several other aspects of the law of the sea needed careful study in preparation for the forthcoming international negotiations on those subjects e.g., pollution and other problems connected with preservation of the marine environment, the Sub-Committee was unable to consider them for lack of time.
