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1960 UN Conference on Law of the Sea: A Provisional Impediment in the Debate on Freedom of the Seas

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The vintage and contemporary historical-legal debates and prominence surrounding the subject and idea of the freedom of the seas, fishing, economic and political rights and interests shall perennially remain heavily intertwined, requiring all free nations to arrive upon equitable and realistic agreements. The global sea conferences convened under the auspices of the United Nations in 1958, 1960, and 1973-1982, to discuss and adopt multilateral conventions and treaty agreements on the law of the sea took into consideration new frontiers of oceanographic exploration and development to uncover the vast untapped natural resources of the oceans that would bring countless benefits for all mankind. More importantly, these conferences sought to commence work towards achieving equitable agreements on international laws of the sea, in that, only then would the freedom of the seas and the right to harvest its resources be ensured. Additionally, the conventions sought for an equitable concept of the freedom of the high seas and its protection for all mankind to freely enjoy and access oceans, seaways, and airways, thereby permitting increased communication, commerce and cooperation between distant lands. And thus began the second United Nations Conference on the Law of the Sea in Geneva from March 17 to April 26, 1960, with eighty-eight participating States. Although no new agreements were concluded, the objective was primarily to ruminate upon critical subjects including the breadth of the territorial sea and fishery limits, which could not be agreed upon in the previously concluded 1958 Convention.[1] For centuries, the law of sea has been based on the customary law and concept of freedom of the seas, with nations' control of the oceans limited to narrow bands adjacent to their coasts. However, by the middle of the 20th century, as nations increased their capability to engage in long-range fishing and commercial extraction, concerns arose about the exhaustibility of ocean resources, the erosion of the concept of

1 UN Doc. No. A/RES/1307(XIII) 1958, UN Yearbook, pp. 381-383; for related reading and reference see, *The New York Times*, September 29, 1960, p. 2.

freedom of the seas with many nations asserting sovereignty over wider areas, claiming rights to the resources of the continental shelf and the waters above.[2] This background framework rendered it nearly imperative to develop a treaty-based regime for ocean governance.

The main issues up for discussion and debate at the second UN Conference were: a) the breadth of the territorial sea bordering each coastal state; and, b) establishment of fishing zones by coastal states in the high seas contiguous to, but beyond, the outer limit of the territorial seas of coastal states. The reciprocal rights of each coastal and fishing or maritime state in such inner and outer zones involved questions pertaining national security — such as the innocent passage of warships, as well as of maritime and aerial commerce, and fisheries rights and conservation.[3] The Conference was concerned on international law, as that regulates the use of the sea, and therefore, dealt with international legal rights and duties of various countries and their nationals, including the right to navigate in the airspace over the sea and beneath its surface.[4]

The Conference was governed by procedural rules resembling those of the UN in voting procedure.[5] The Conference worked in two stages; the first being a Committee of the Whole and the second, the Plenary. However, the striking difference in the two stages was that for the adoption of a proposal in the Committee of the Whole a simple majority was required, whereas, in the Plenary, a two-thirds majority was mandatory.[6] The Committee of the Whole was formed by all States present for the purpose of discussing and debating the various proposals on territorial seas and contiguous fishing zones. This Committee by a simple majority vote could adopt a report which would include proposals to the Plenary Session of the Conference, where an official convention could be adopted by the delegates upon receiving an affirmative two-thirds vote of the States present and voting, while not abstaining. In accordance with the usual UN practice, Rule 35 of the Rules of Procedure adopted provided that in the Plenary Session (General Committee) voting on all matters of ‘substance’ would require a two-thirds majority, whereas matters of ‘procedure’ would require only a simple majority of the representatives present and voting. Rule 32 provides further that once a proposal has been adopted or rejected, it could not be reconsidered except upon the vote of a two-thirds majority. When the 1960 Conference was being conducted in the form of the Committee of the Whole, however, a simple majority of representatives present and voting was sufficient in accordance with Rule 49.[7] The Rules of Procedure were debated during the first two ‘Plenary Sessions’ of the General Committee of the Conference and adopted after a few amendments.[8]

Unlike the first Conference held in 1958, the second Conference saw no proposals that envisaged the three-mile limit as the maximum limit for all States. Instead, a 6-mile territorial sea plus 6-mile contiguous fishing-zone proposal was debated vigorously, albeit not resulting in any new agreements and/or rules on the limits of the territorial sea and exclusive fishing rights.

2 Barbara Bean, “Law of the Sea,” *American Society of International Law*, April 27, 2015.

3 Arthur H. Dean, “The Second Geneva Conference on the Law of the Sea: The Fight for Freedom of the Seas,” *The American Journal of International Law*, vol. 54, no. 4, Oct. 1960, pp. 751-789.

4 Ibid.

5 The Secretariat of the United Nations prepared “Provisional Rules of Procedure” U.N. Doc. No. A/CONF.19/2 (1960) and memorandum thereon, U.N. Doc. No. A/CONF.19/3 (1960).

6 For more details see, Rules of Procedure 35 and 49 adopted by the Conference (A/CONF. 19/7).

7 In reference to U.N. Doc. No. A/CONF.19/7 (1960).

8 Ibid.

Rejecting the opposition raised by few States in the General Assembly to the very convening of this second Conference, the Conference went ahead, although without yielding any tangible breakthrough on the subjects of universal maritime law-making and freedom of the seas — even though there was higher representation at this Conference (i.e., eighty-eight States instead of eighty-six). It was earnestly hoped that the failure of this Conference would not become a milestone setback to the overall movement for codification and progressive development of maritime international law.[9] It simultaneously brought home the obvious truth that no movement of this kind could take place, at least via international agreements, unless States were willing to view their own interests in the larger context of the interests of the international society as a whole — that being the essence of the compromise which was invariably needed to secure general acceptance of a rule on any controversial issue/subject.[10] Concurrently, it was urged that the letdown of the Conference not be regarded as diminishing the importance of the work of the International Law Commission.[11]

The battle to retain the freedom of the seas became more pronounced with the second UN Conference being a vital landmark for statesmen, lawyers of international law, and historians, despite its failure in coming up with a perceptible step forward. Resultantly, during the closing stages of the second Conference, the pressing need for a third Conference was turned attention to, in order to secure universally acceptable and adhered to rules and laws for the seas and oceans globally. On the law of the sea, free and democratic maritime nations were strong advocates for consolidation of the legal order for the seas and participating in the norm-creating processes. These nations supported the traditionally established rules of the law of the sea[12] and maintained that traditionally, the law of the sea was based on the principles of sovereignty and freedom — a milestone that the third UN Conference on the Law of the Sea (1973-82) made a substantial contribution towards whilst creating a new treaty regime, namely the 1982 United Nations Convention on the Law of the Sea (UNCLOS) that was premised on the broad and long-term consideration that stability of an international legal order of the seas was indispensable to the world order at large.

9 D.W. Bowett, "The Second United Nations Conference on the Law of the Sea," *The International and Comparative Law Quarterly*, vol. 9, no. 3, July 1960, pp. 415-435.

10 Ibid.

11 Ibid., p. 435.

12 Nisuke Ando, ed., *Japan and International Law: Past, Present, and Future* (The Hague: Kluwer Law International, 1999) p. 373.