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Method of Work and Procedures of the Conference: Report of the Secretary-General

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METHOD OF WORK AND PROCEDURES OF THE CONFERENCE: REPORT OF THE SECRETARY-GENERAL

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1. In accordance with paragraph 7 (*b*) of resolution 1105 (XI), adopted by the General Assembly on 21 February 1957, the Secretary-General, with the advice and assistance of a group of experts [1], prepared the present memorandum concerning the method of work and procedures of the Conference. The provisional agenda and the provisional rules of procedure, to which this memorandum refers, are being circulated as separate documents (A/CONF.13/9 and 10).

I. Provisional agenda of the Conference

2. The provisional agenda must be considered in relation to the purposes of the Conference. These have already been defined in resolution 1105 (XI). They are twofold, namely:

(i) "To examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem, and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate" (resolution 1105 (XI), para. 2); and

(ii) "To study the question of free access to the sea of land-locked countries, as established by international practice or treaties" (resolution 1105 (XI), para. 3).

3. It is believed that the distinction between the two tasks is not a fundamental one, but arises merely from the circumstances under which they were allotted to the Conference. The work of the Conference connected with an examination of the law of the sea is a sequel to that of the International Law Commission. That Commission itself, at its first session (1949), drew up a provisional list of topics whose codification it considered necessary and feasible. Among the items in this list were the régime of the high seas and the régime of the territorial sea. The Commission itself included the régime of the high seas among the topics to be given priority and began work on it. Subsequently, at its third session (1951), in pursuance of a recommendation contained in General Assembly resolution 374 (IV), the Commission decided to begin work also on the régime of the territorial sea. At its eighth session (1956), the Commission completed its work on both these topics and submitted to the General Assembly seventy-three articles concerning the law of the sea as a whole, of which twenty-five (part I) related to the territorial sea, and forty-eight (part II) to the high seas.[2]

4. At the same time the Commission recommended "that the General Assembly should summon an international conference of plenipotentiaries to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem, and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate." [3]

5. At no time, however, did the Commission study the question of free access to the sea of land-locked countries, as established by international practice or treaties. The decision to recommend the Conference to study this specific question, as well as to examine the law of the sea generally, was taken by the General Assembly at its eleventh session on the advice of the Sixth Committee. There being already before the Sixth Committee a twenty-two Power draft resolution, recommending that an international conference of plenipotentiaries should be convened to examine the law of the sea along the lines recommended by the International Law Commission (A/C.6/L.385 and Add.1-3), amendment was introduced (A/C.6/L.393) recommending that the Conference should also study the problem of free access to the sea of land-locked countries.[4] This amendment, proposed by Afghanistan, Austria, Bolivia, Czechoslovakia, Nepal and Paraguay, was accepted by the sponsors of the original draft resolution and was included in the resolution as adopted by the Sixth Committee, and thereafter by the General Assembly.

6. It is to be noted that the resolution contains no specific recommendation to the Conference, as it does in the case of the law of the sea, to embody in an international convention or other instruments the results of its study of the question of free access to the sea of land-locked countries. At the same time, there would appear to be no reason why the Conference should not embody the results of its work on this question in a

[1] See below, report of the Secretary-General on the preparation of the Conference (A/CONF.13/20), p. 303.

[2] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9* (A/3159), chapter II.

[3] *Ibid.*, para. 28.

[4] *Ibid., Annexes*, agenda item 53, document A/3520, paras. 13 and 14.

suitable form of instrument if it considers it appropriate to do so.

7. It is believed, therefore, that no difference of purpose exists with regard to the two tasks of the Conference. Nevertheless, in view of the different origin and background of the two tasks, it seems desirable to distinguish between them when it comes to adopting the agenda of the Conference. Thus, in the provisional agenda, item 10 is listed as "Examination of the law of the sea in accordance with resolution 1105 (XI) adopted by the General Assembly on 21 February 1957", and item 11 is listed as "Study of the question of face access to the sea of land-locked countries in accordance with resolution 1105 (XI) adopted by the General Assembly on 21 February 1957."

8. The provisional agenda of the Conference requires little explanation beyond that which has already been given. Most of the items, as well as the order in which they are listed, become clear upon a consideration of the provisional rules of procedure. For example, the convening of the Main Committees and of the Special Committee on the Question of Free Access to the Sea of Land-Locked Countries for the purpose of electing Chairmen, which appears as item 6 on the agenda, precedes the election of Vice-Presidents. This order has been thought desirable to secure adequate representation on the General Committee.

II. Provisional rules of procedure of the Conference

9. These rules for the most part follow the standard pattern of rules of procedure for international conferences. It may, however, be of interest to draw attention to certain features of the United Nations Conference on the Law of the Sea, and to consider those features in relation to the provisional rules of procedure of the Conference.

10. First, there is the unusually wide scope of the Conference. Leaving aside for the moment the question of free access to the sea of land-locked countries, the Conference is required "to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem..." This feature of the Conference renders necessary, not merely the organization of the work in such a way that these questions can be examined in all their various aspects, but also — and above all — the provision of exceptionally good machinery for co-ordination.

11. Secondly, there is the consideration that, notwithstanding the wide scope of its examination of the problem, the Conference is charged also with a specifically legal task and, moreover, one requiring peculiar precision and exactitude. This is the task of embodying "the results of its work in one or more international conventions or such other instruments as it may deem appropriate". This feature of the Conference renders necessary the provision of exceptionally good arrangements for drafting.

12. Thirdly, the number and diversity of the problems with which the Conference will have to deal seem to require that it should be free to adopt a number of different kinds of instruments according to its discretion, and should not necessarily try to compress all the results of its work in a single instrument. At the same time the possibility of a single instrument should not be excluded, if the Conference deems such a solution to be preferable.

13. Those features of the United Nations Conference on the Law of the Sea will now be considered in relation to the provisional rules of procedure which the Secretary-General will submitt to the Conference.

14. First, the very wide scope of the Conference renders it essential that the greater part of the work should be done in committee, and it is assumed that there will not be a general debate in the plenary meetings of the Conference.

15 The provisional rules of procedure envisage the setting up of four Main Committees, to each of which is allocated a specific part of the articles concerning the law of the sea prepared by the International Law Commission. This should ensure that the task of the Conference is tackled in a uniform and systematic manner, and it takes into account the fact that the General Assembly has referred to the Conference as its basis of discussion the report of the International Law Commission.

16. According to this plan, the Main Committees would be established, and their work divided, as follows:

(*a*) First Committee (Territorial Sea and Contiguous Zone): articles 1-25 and 66;

(*b*) Second Committee (High Seas: General Régime): articles 26-48 and 61-65;

(*c*) Third Committee (High Seas: Fishing, Conservation of Living Resources): articles 49-60;

(*d*) Fourth Committee (Continental Shelf): articles 67-73.

17. It is recommended that the four Main Committees should organize their discussion of the articles of the International Law Commission in two stages.

18. The first stage would consist of a short general debate on those articles referred to the Committee, or a discussion of them article by article, or even a combination of both of these methods. At this stage, representatives would express their views on the articles and, so far as possible, put forward any proposals or amendments which they may wish to make regarding them. A decision on the articles, or on the proposals or amendments put forward, would not necessarily be made at this stage. However, provisional votes could be taken when desirable and in so far as it should be necessary to take decisions of principle in order to facilitate subsequent stages of the work of the Committee. The process of formulation of texts or the consideration of particular problems might well be referred to sub-committees set up for those purposes. It may be hoped that this first stage would be completed by the end of the third week of the Conference.

19. The second stage would involve taking the articles *seriatim* and, at this stage, final decisions should be reached on the texts to be recommended by the Committee to the plenary meeting of the Conference. It would be desirable if, at this stage, each Committee could indicate the extent to which reservations to the texts recommended by it would be permissible if such texts were incorporated in a convention or other appropriate instrument.

20. The separate background to the question of free access to the sea of land-locked countries seems to indicate that the task of the Conference can best be accomplished by establishing a Special Committee to consider this question, distinct from the Main Committees which will examine the law of the sea. It is not suggested, however, that the difference in title should be more than nominal, or that the status of the Special Committee on the Question of Free Access to the Sea of Land-Locked Countries should be in any way inferior to that of the four Main Committees dealing with the law of the sea.

21. It is thus provided in rule 48 that each State participating in the Conference may be represented by one person on the Special Committee no less than on the four Main Committees. It is realized that some States may find it difficult to be represented in all the committees. It is, however, important that the question of free access to the sea of land-locked countries should not be considered as a question of interest only to the land-locked countries themselves and their immediate neighbours with seaboards. It is a question of considerable significance to international law as a whole, with a direct bearing on the law of the sea. For these reasons, the Special Committee will not be able to do its work satisfactorily unless its membership is broadly representative of (*a*) the land-locked countries themselves; (*b*) their neighbours; and (*c*) other countries.

22. The fact that this Special Committee will not have before it a section of the articles of the International Law Commission upon which to base its deliberations necessarily poses certain problems peculiar to that Committee. A partial solution may well be found if Governments could submit proposals in advance of the Conference; accordingly, Governments are earnestly invited to follow such a course.

23. The magnitude of the task allotted to each committee renders it essential that they should be given the power to establish such sub-committees or working groups as may be necessary, and this has been provided for in rule 46 of the provisional rules of procedure.

24. The necessary division of work between so many committees, not to mention the sub-committees which these committees may themselves see fit to appoint, makes it indispensable that the Conference should have adequate machinery for co-ordinating its work. The need for co-ordination is emphasized by the interdependence of the parts of the articles allocated to the four Main Committees. It has been sought to meet this need in rules 15 and 50 of the provisional rules of procedure, particularly by providing for the holding of joint meetings of committees or sub-committees and the establishment of joint working groups.

25. Secondly, since the Conference is to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate, it is desirable that it should have in mind, from the very beginning, the problem of drafting. Profiting from the experience of earlier conferences, which have been similarly confronted with the responsibility of framing rules of international law on a large scale, there would seem to be no doubt that the Conference should appoint at an early stage a drafting committee.[5] This committee, which is provided for in rule 49, should have no responsibility for the substance of the provisions to be approved by the Conference. Its duties, as suggested in the rules, should be rather those of ensuring consistency within one and the same instrument, and co-ordination between different instruments to be adopted by the Conference. It would also be responsible for preparing the Final Act of the Conference, and it might render valuable assistance in drafting the preambular and final clauses of the various conventions and other instruments that might be adopted.

26. In order that the drafting committee may discharge these responsibilities properly, it is considered essential that its membership should not be unduly large. For this reason a membership of nine has been proposed. Moreover, although it is desirable that the various languages and legal systems should be adequately represented on this committee, the main qualification for appointment should be experience in legal draftsmanship. It would also be desirable that a member or members with scientific qualifications be included in the composition of this committee.

27. Thirdly, since, as already indicated in paragraph 12, the Conference should have complete liberty in deciding upon the form of the instruments in which it will embody the results of its work, it is not considered necessary to provide in the rules of procedure for the form of the instruments which the Conference may eventually adopt.[6] It might, however, be wise for these instruments to contain an article stating clearly that it is the intention of the signatories that the rules contained

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[5] The conferences whose experience would seem to be especially valuable in this connexion are (i) The Hague Peace Conference of 1907; (ii) the London Naval Conference of 1908-1909; and (iii) the Conference for the Codification of International Law held at The Hague in 1930.

[6] It may be recalled that the rules of procedure of The Hague Codification Conference in 1930 contained rather elaborate provisions in this connexion. Thus, article XX of these rules of procedure provided separately for conventions, protocols, special protocols, recommendations and *vœux*. It reads as follows:

"Each Committee may draw up one or more draft conventions or protocols and may formulate recommendations or *vœux*.

"A Committee may embody in the draft conventions or protocols any provisions which have been finally voted by a majority containing at least two-thirds of the delegations present at the meeting at which the vote takes place.

"In the case of provisions which have secured only a simple majority, a Committee, at the request of at least five delegations, may decide by a simple majority whether such provisions are to be made the object of a special protocol open for signature or accession.

"The provisions referred to in the two preceding paragraphs, if they are not embodied in a draft convention or protocol, shall be inserted in the Final Act of the Conference.

"Each convention or protocol shall contain a provision expressly showing whether reservations are permitted, and, if so, what are the articles in regard to which reservations may be made.

"Recommendations and *vœux* may be adopted by a simple majority."

Moreover, the rules of procedure, as originally drawn up by the preparatory committee, provided also for declarations in which would be set forth "the principles regarded at least by a majority of the delegations represented on the Committee as the expression of existing international law." This provision, however, was not adopted by the Conference.

in the instrument shall be applicable in the future without prejudice to the question whether they are or are not existing rules of customary international law.

28. The question of voting in the plenary meetings is dealt with in rule 35 of the provisional rules of procedure. A distinction is made between matters of substance and matters of procedure, the former requiring a two-thirds majority of the representatives present and voting and the latter a majority of the representatives present and voting. In cases of doubt the President of the Conference shall rule on the question and his ruling stands unless overruled by a majority of the representatives present and voting.[7]

29. As in the case of the General Assembly, it is suggested in rule 53 of the provisional rules of procedure that committees and sub-committees should arrive at their decisions by a simple majority. At The Hague Codification Conference in 1930 the rule was adopted that committees should adopt recommendations and *voeux* by a simple majority, and draft conventions and protocols by a two-thirds majority; whilst the conference itself could adopt by a simple majority draft conventions and protocols, recommendations and *voeux* presented by the committees. In view of the system of voting recommended in rule 35, it is suggested that there is no reason why committees of the Conference should not in every case arrive at their decisions by a simple majority.

III. Working schedule of the Conference

30. The facilities available to the Conference and the desire to enable all States participating to be represented on the committees demand that the times of meetings should be so arranged as to ensure that not more than three meetings take place at the same time. As to working hours there will normally be meetings twice a day, Monday through Friday, from 10.30 a.m. to 1 p.m. and from 3 p.m. to 6 p.m. However, the rule should be regarded as having sufficient flexibility to allow for variation when the work of a committee demands it.

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7 There are a great variety of precedents in the matter of voting rules, for instance, the systems enumerated below:

(*a*) The system of the United Nations Conference on International Organization, San Francisco, 1945, according to which decisions on questions of procedure were taken by a simple majority and decisions on all other questions were taken by a two-thirds majority;

(*b*) The system of the General Assembly of the United Nations (Article 18 of the Charter) according to which decisions on important questions are taken by a two-thirds majority, and decisions on other questions by a simple majority;

(*c*) The system of many international conferences (*e.g.*, the United Nations Maritime Conference, 1948; the Conference on Freedom of Information, 1948; the United Nations Conference on Road and Motor Transport, 1949; the Conference on Declaration of Death of Missing Persons, 1950; the Conference on the Status of Refugees and Stateless Persons, 1951; the Conference on Maintenance Obligations, 1956; and the Conference on a Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956), according to which decisions on all questions are made by a simple majority; and

(*d*) The system of the Conference on the Statute of the International Atomic Energy Agency, 1956, according to which decisions to amend the provisions of an existing draft were taken by a two-thirds majority and — unless otherwise provided for — all other decisions were taken by a simple majority. In the present instance the application of such a system would mean that decisions to amend definite proposals contained in the International Law Commission's draft would be taken by a two-thirds majority and all other decisions (including decisions to adopt the Commission's proposals) would be taken by a simple majority.