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SECOND CONFERENCE

ENGLISH

ON THE LAW OF THE SEA **UN/ISA COLLECTION**

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Item 4 of the
Provisional Agenda

ADOPTION OF THE RULES OF PROCEDURE

Mexico: Amendments to the provisional rules of procedure (A/CONF.19/2)

Besides the correction of several errors of translation in the Spanish text of Articles 6 and 47 of the Provisional Rules of Procedure^{*/} prepared by the Secretariat of the United Nations for the Second United Nations Conference on the Law of the Sea, and that the Spanish word "propuestas" (proposals) be always used just as it was in the Spanish text of the Rules of Procedure of the First United Nations Conference on the Law of the Sea - instead of "proposiciones" (proposition. the delegation of Mexico proposes, as the result of a careful study of the above mentioned document, that Rules 9, 20, 41, 49 and 54 of the Provisional Rules of Procedure be amended, for the reasons set forth, as follows:

Text of Provisional Rules

Rule 20

No person may address the Conference without having previously obtained the permission of the President. Subject to Rules 21 and 22, the President shall call upon the speakers in the order in which they signify their desire to speak. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.

Text suggested by the delegation of Mexico

Rule 20

No person may address the Conference without having previously obtained the permission of the President. Subject to Rules 21 and 22, the President shall call upon speakers in the order in which they signify their desire to speak. The Secretariat shall be in charge of drawing up a list of such speakers. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.

Commentary

The amendment proposed by the delegation of Mexico is only for the purpose of making quite clear that the practice invariably followed by the General Assembly of the United Nations, should be likewise applied in the Conference, thus preventing discussions, similar to those that sometimes arose in the First Conference, in connection with the order in which the speakers would address the Meeting.

*/ Doc. A/CONF.19/2, 14 January 1960.

Rule 41

If two or more proposals relate to the same question, the Conference shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The Conference may, after each vote on a proposal, decide whether to vote on the next proposal.

Rule 41

If two or more proposals relate to the same question, the Conference shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

Commentary

The proposed elimination of the last sentence of this Rule is to the effect that the Rules shall follow strictly the voting procedure adopted by the First Conference, both in the First Committee as well as in the plenary meetings, in connection with the proposals submitted to them on the breadth of the territorial sea and the limits of fisheries.

Indeed, the First Committee, in its 56th and 57th meetings, both held on April 19th, 1958, did vote on all the proposals in question, except, of course, those that were withdrawn by their authors.

Likewise, the Conference during its 12th plenary meeting, held on April 24th, 1958, adopted the recommendations submitted by the General Committee, whose point 2 foresaw that "all proposals presented in plenary meeting, relating to articles 3 and 66 are to be put to the vote". The Conference, in conformity with this decision, voted, in its 14th plenary meeting held on April 25th, 1958, upon all the proposals on the breadth of the territorial sea and the limits of fisheries that had been, either referred to it by the First Committee, or submitted directly to its consideration.

This procedure, which seemed advisable during the First Conference, is the only one suitable for the Second Conference. It is obvious that, if there is the desire to reach an agreement on questions of such vital importance as the questions to be dealt with by the Conference, such an agreement can only be the outcome of negotiations carried out in a spirit of absolute loyalty and truthfulness. Consequently, it is necessary to avoid in the Rules of Procedure of the Second Conference, the inclusion of any provision which could be used for trying to prevent, through technicalities of procedure, that the Conference or the Committee of the Whole may decide on every one and all of the proposals which may be submitted to them. Otherwise the motions for obtaining priority of vote in favour of one or another proposal, and the inevitable discussions on points of procedure would

multiply themselves, since any of such motions could result - as it was attempted without success during the First Conference, in the 56th meeting of the First Committee on April 19th, 1958 - in the exclusion of the proposals failing to obtain priority.

Rule 49

The rules contained in chapters II, V and VI above, shall be applicable mutatis mutandis to the proceedings of committees and sub-committees, except that decisions of committees and sub-committees shall be taken by a majority of the representatives present and voting.

Rule 49

The rules contained in chapters II, V and VI, except paragraph 2 of Rule 38, shall be applicable mutatis mutandis to the proceedings of committees and sub-committees, except that decisions of committees and sub-committees shall be taken by a majority of the representatives present and voting, but not in the cases of a reconsideration of proposals or amendments in which the majority required shall be that established by Rule 32.

Commentary

This amendment, as it appears from the suggested text, embodies two parts: the inapplicability of the second paragraph of Rule 38 to the committees and sub-committees and the observance by them of the provisions of Rule 32.

1. As to the first part, it is pertinent to note that paragraph 2 of Rule 38, in which it is provided that "for the purpose of this rule, 'voting' refers to the voting on each individual proposal or amendment", did not appear in the Rules for the First Conference. Probably this addition, made now by the Secretariat of the United Nations, is due to the desire that, if the circumstances make it advisable, sufficient time be available during the voting on the several proposals or amendments, with the purpose of making all possible efforts in conciliating the divergent points of view.

The idea in question seems praiseworthy. However, the delegation of Mexico considers that, in order that it may produce the effects sought for, it would suffice that it may be applied in the Conference itself which is to adopt the final decisions. In fact, it is assumed that its application in the Committees would only mean a waste of time, since, on the one hand, the Conference has full authority to modify the decisions of the Committee of the Whole, and, on the other hand, inasmuch as in the agenda of the Conference only two closely tied questions are included, all proposals to be submitted would undoubtedly and exclusively deal with them. It would therefore be superfluous and wholly inconvenient, to interrupt the vote and reopen the debate each time a vote would have been cast on a proposal or an amendment.

2. As to the second part of the amendment, which consists in determining that in the cases of a reconsideration of proposals or amendments the majority vote contemplated by Rule 49 would not be sufficient but a two-thirds majority should be required as provided by Rule 32, the reasons for its desirability seem extremely obvious.

Such a requisite, of a special majority for the reconsideration of a decision already adopted, constitutes, indeed, a fundamental rule for the orderly conduct of business of any organ, be it national or international. For instance, in the Rules of Procedure of the General Assembly of the United Nations, in addition to Rule 83 (wherefrom was copied, with slight alterations, Rule 32 of the Provisional Rules) which provides for a two-thirds majority for the reconsideration of the proposals in the plenary meetings of the Assembly, there exists also another rule, Rule 124, worded in the same terms as Rule 83 which prescribes likewise a two-thirds majority for the decisions that may adopt, on this matter, the Committees of the Assembly.

It is true that Rule 49 of the Provisional Rules has the same text as Rule 53 of the First Conference. But it is evident that the adoption of that rule, in 1958, could only be due to an oversight that would be very harmful not to correct now specially bearing in mind the unfortunate experience which was originated by the attempt of applying the aforesaid Rule 53 in the First Committee of the Conference. An entire meeting, the 62nd, held on April 23rd, 1958, was then totally wasted because of acrimonious and needless discussions, provoked by a motion for re-examination of a certain proposal relating, precisely, to the breadth of the territorial sea and the limits of fisheries.

Rule 54

Summary records of the plenary meetings of the Conference and of the meetings of the General Committee and of the Committee of the Whole, shall be kept by the Secretariat. They shall be sent as soon as possible to all representatives, who shall inform the Secretariat within three working days after the circulation of the summary record of any changes they wish to have made.

Rule 54

Verbatim records of the plenary meetings of the Conference and of the meetings of the General Committee and of the Committee of the Whole, shall be kept by the Secretariat. They shall be sent as soon as possible to all representatives, who shall inform the Secretariat within three working days after the circulation of the verbatim record of any changes they wish to have made.

Commentary

The experience of the First Conference showed that, in spite of the competence of the Secretariat's staff, it is materially impossible to obtain adequate summary records, and that in a high percentage of cases it becomes indispensable to make many corrections to such records.

On the other hand, it seems evident that, be what it may the outcome of the Conference, its records shall form an irreplaceable instrument for a correct interpretation of its proceedings. The delegation of Mexico, consequently, believes that it is necessary that among the official records of the Conference there should exist verbatim records of the meetings referred to by Rule 54. This requisite becomes still better founded if one remembers that the General Assembly, through Resolution 1105(XI) whereby it was decided to call the First Conference, transmitted to the Conference, not the summary records, but "the verbatim records of the relevant debates in the General Assembly," that is to say, the verbatim records of the Sixth Committee of the Assembly. If such a decision was considered advisable by the Assembly, in connection with debates which had only the character of antecedents in relation to the First Conference, there is a stronger reason for keeping, during the Second Conference, verbatim records of its debates, both taking into account the nature of the questions to be dealt with by the Conference and the importance of the work entrusted to it.