

Third United Nations Conference on the Law of the Sea

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

A/CONF./BUR/SR.2

Summary records of meetings of the General Committee 2nd meeting

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume I (Summary Records of Plenary Meetings of the First and Second Sessions, and of Meetings of the General Committee, Second Session)

41. Mr. STEVENSON (United States of America) raised two issues which were causing his delegation some concern, namely, the procedure for the settlement of disputes and the provisional application of treaties specifically mentioned. Those were extremely important questions which were of interest to all the Committees and he wished to be assured that they would be taken up in the plenary.

42. The CHAIRMAN pointed out that, in any event, it would be for the Conference, in plenary, to consider and co-ordinate all items. Under those conditions, there did not appear to be any reason for modifying the allocation of items.

43. Mr. STEVENSON (United States of America) repeated that he would prefer to have the opportunity of considering those items in the plenary, before the three Committees had made specific proposals.

44. The CHAIRMAN said that that possibility was in no way excluded and an appropriate date would have to be set for considering that question. He would consult the chairmen of the three Main Committees on the matter.

45. Mr. ZEGERS (Chile) proposed that at the end of paragraph II, after a comma, the following words be added: "taking into account the introductory note accompanying the list of subjects and issues". That would draw the attention of the Conference to the note.

46. The CHAIRMAN, replying to a question by Mr. KEDADI (Tunisia), said that subparagraph (b) should be deleted from the list of items referred to each Committee.

47. Mr. CHAO (Singapore) recalled that an informal agreement had been reached on that matter the year before. His delegation would prefer that the list of items referred to each Committee be complete and final, but in order to facilitate the work it would not insist on that point. A flexible approach was needed and, if each Committee had the right of taking up any item which it deemed relevant, then the note relating to the agreement of 27 August 1971 should be deleted from the end of the document. That note appeared to his delegation to be a hindrance and it should not be retained.

48. Mr. ARIAS SCHREIBER (Peru) said that it would be more in line with the spirit in which the preparatory committee had worked if subparagraph (b) were deleted. On the other hand, the distinctions which had been made should be retained without amending the list. The question raised by the United States delegation was not on the list of items. The proposal made by the representative of Chile was most judicious.

49. Finally, with reference to the suggestion of the representative of Singapore, he pointed out that the note in question was the result of long and difficult negotiations, and he hoped that he would withdraw his proposal.

50. The CHAIRMAN said that the only amendment proposed concerned the deletion of subparagraph (b). With re-

spect to the suggestion by the representative of Singapore the agreement of 27 August 1971 had been arrived at after long discussions, and the note at the end of the document should not hinder the work of the Committees.

51. Mr. OGISO (Japan) regretted that he did not have available the summary record of the meeting at which the introductory note had been adopted. A mutual understanding, as explained by the Chairman, had indeed been reached. If the Chilean proposal was adopted, he would propose adding the following words to it: "and the understanding expressed in connexion therewith".

52. Mr. ZULETA TORRES (Colombia) and Mr. ABDEL HAMID (Egypt) shared the Chairman's views on the note and agreed that it would be dangerous to delete it.

53. Mr. OGISO (Japan) said that if the introductory note was explanatory, then the mutual understanding which had been expressed when the list had been adopted should also be mentioned in paragraph II.

54. The CHAIRMAN pointed out that reservations had been expressed in Sub-Committee II of the sea-bed Committee and that they were to be found in the summary records of the meetings. Delegations wishing to do so could again express their reservations in the plenary.

55. Mr. LAPOINTE (Canada) associated himself with the appeal to the delegation of Singapore not to insist on its proposal.

56. Mr. WAPENYI (Uganda) felt that the retention of the note would raise no problem. Besides, each Committee would have the right to discuss the question of limits, but the decision would be taken in the plenary. Furthermore, according to a newspaper article, the Chairman had made a statement in connexion with the breadth of territorial waters, the rights of coastal States, free passage for navigation and other questions of like importance.

57. The CHAIRMAN assured members that he had never made such a statement.

58. Mr. ZEGERS (Chile) also urged the delegation of Singapore not to insist on its proposal. The agreement of 27 August 1971 was an essential aspect of the preparatory work.

59. Mr. CHAO (Singapore) felt that that agreement had been as if were consecrated by the other delegations and his delegation did not wish to be guilty of desecration. It had made its proposal only to facilitate the work and to rid the Committee of an impediment, but it would defer to the view of the majority.

60. The CHAIRMAN said that if there was no objection, he would take it that the Chilean proposal was adopted.

It was so decided.

The meeting rose at 1.05 p.m.

2nd meeting

Friday, 12 July 1974, at 9.05 a.m.

Chairman: Mr. H. S AMERASINGHE (Sri Lanka).

Consideration of additional rules of procedure

1. The CHAIRMAN said that a proposed new rule to follow rule 62 of the draft rules of procedure (A/CONF.62/2 and Add. 1-3) had been drafted, in accordance with the decision taken by the plenary Conference at its 38th meeting that it was competent to consider the motion of Senegal concerning invi-

tations to national liberation movements. The proposed rule read:

"1. National liberation movements recognized by the Organization of African Unity or by the League of Arab States may designate representatives to participate as observers, without the right to vote, in the deliberations of the

Conference, the Main Committees and, as appropriate, the subsidiary organs.

"2. Written statements of such observers shall be distributed by the Secretariat to the delegations at the Conference."

2. If he heard no objection, he would take it that the Committee approved of the new rule.

The proposed new rule was adopted.

3. The CHAIRMAN said that a definition of the term "States participating" had been proposed as a new rule to follow rule 40. The proposed definition read:

"The term 'States participating' in relation to any particular session of the Conference means those States which inform the Secretariat of the Conference that they will be participating in that session.

"The term shall not include any State which has informed the Secretariat that it will not participate in that session or any State that has failed to inform the Secretariat that it will so participate.

"If a State participating in any particular session of the Conference should at any time inform the Secretariat that it has decided to withdraw from that session, it will not thereafter be deemed to be a participant in that session."

4. Clearly, under the proposal, if a State informed the Secretariat that it was resuming its participation, it would again be considered a participant.

5. A separate rule containing the definition was necessary since there was already a rule defining the term "representatives present and voting".

6. Mr. BALLAH (Trinidad and Tobago) said that the proposed definition presented some difficulties. His delegation had always maintained that "participation" and "withdrawal" meant actual participation or withdrawal and not a mere intent, but the first paragraph of the proposed definition referred to intent only. A delegation might signify such an intent and yet not come to the Conference, or might come to the opening meeting and leave. In either case it would be considered a participant and affect decisions by its absence. That should not be allowed. He felt the problem could be resolved by minor redrafting, such as by adding the phrase "and which had attended the session" to the first paragraph.

7. The same problem arose in the third paragraph. That paragraph should indicate that the State had actually withdrawn, not that it simply intended to withdraw.

8. The CHAIRMAN said that the proposal had been drafted as it had in order to avoid the necessity of deciding, each time a vote was taken, how many States were actually participating. A State's statement of intent to participate or withdraw could be construed to mean actual participation or withdrawal, in order to avoid counting heads every time.

9. Mr. MEDJAD (Algeria) supported the statement of the representative of Trinidad and Tobago. The distinction between a declared intent to participate and actual participation was highly important. There was a parallel in criminal law, which did not punish a person for a mere intention unless that intention had at least begun to be carried out. Thus, it was quite possible that a State would intend to participate and would then change its mind or not participate for some other reason. Absent States should not be permitted to vote. He therefore suggested that the phrase "and which actually participate in that session" should be added at the end of the first paragraph. Whether or not a State was present could be easily verified by the Secretariat or by the Credentials Committee.

10. Mr. ABDEL HAMID (Egypt) suggested that it should be stated clearly in the first paragraph of the proposed definition that a participating State meant a State which had submitted its credentials and was actually participating in the Conference. He considered that the second paragraph should be deleted since its meaning was not altogether clear. The third paragraph could be maintained, although it needed some slight redrafting.

11. Mr. ZEGERS (Chile) agreed with earlier speakers that the words "actual participation" should be included in the first paragraph. That addition would take care of the concern expressed by the representative of Trinidad and Tobago. He believed, however, that the question of submission of credentials was covered by the existing rules of procedure. He agreed with the representative of Egypt that the second paragraph was superfluous.

12. The CHAIRMAN said that he too inclined to the view that the second paragraph was superfluous.

13. Mr. ADENIJI (Nigeria) endorsed the suggestion that a phrase should be added at the end of the first paragraph to indicate that only States that were actually represented at the session in question would be considered as participating States. He said that it would also be advisable to add a new sentence making it clear that States which had not yet registered with the Secretariat but which were represented and had submitted credentials under rule 3 of the rules of procedure were also participating States. If that was done, the second paragraph would become superfluous.

14. Mr. KHARAS (Pakistan) associated himself with the views of the representative of Trinidad and Tobago and suggested that his point could be covered by a reference to the physical presence of representatives.

15. Mr. DUDGEON (United Kingdom) said that his delegation had every sympathy with the viewpoint expressed by the representative of Trinidad and Tobago and other speakers, but felt that it was important to establish some objective criteria on which to base decisions. He tended to agree with the representative of Pakistan that the question of physical presence was important. Any State that had registered with the Venezuelan Governmental Committee and had not signified its intention to withdraw should be regarded as participating in the session. It was true that the Conference did not want absentee voters; but it was even more imperative to establish objective criteria.

16. Mr. TREDINNICK (Bolivia) said that his delegation had had the same doubts as the delegation of Trinidad and Tobago. It was essential to make the language of the proposed definition absolutely clear. Accordingly he suggested that the wording "they will be participating" in the first paragraph should be replaced by the words "they are actually present".

17. Mr. BEESLEY (Canada), Chairman of the Drafting Committee, said his delegation agreed that it was important to arrive at objective criteria and believed that participation should be limited to those delegations which had actually arrived at the Conference and registered with the Venezuelan Organizing Committee. The representative of Trinidad and Tobago had made a valid point; the best solution appeared to be that suggested by the representatives of Pakistan and the United Kingdom.

18. Mr. RATTRAY (Jamaica), Rapporteur-General, pointed out that the basic principle of accreditation was laid down in rule 1 of the draft rules of procedure and the actual submission of credentials was dealt with in rule 3. However, if evidence of physical presence was also required, some system of registration, as suggested by the representative of the United Kingdom, would be necessary. The obligation to register had many precedents and he inclined to the view that a simple rule requiring registration, in addition to accreditation, would be advisable.

19. Mr. MOTT (Australia) said that his delegation associated itself fully with the views expressed by the representative of Trinidad and Tobago. The crucial problem seemed to be how to establish the actual presence of representatives at the Conference, and the suggestions in that regard of the representatives of Pakistan, the United Kingdom, Canada and Jamaica were constructive. Accordingly, he suggested that one of the following formulations should be added at the end of the first paragraph: either "and have been registered as participants" or "which are represented by a duly registered delegate".

20. Mr. CALERO RODRIGUES (Brazil) agreed with previous speakers on the need for registration and felt that the wording suggested by the representative of Australia would be suitable.
21. Mr. KEDADI (Tunisia) endorsed the view that a declaration of intent was insufficient to constitute participation and felt that some wording along the lines suggested by the representative of Australia should be incorporated in the first paragraph. Registration did not present any practical problems since an official pass denoting physical presence was issued to each participant in any case.
22. The CHAIRMAN felt that a distinction should be drawn between a pass issued for security purposes and registration with the Secretariat.
23. Mr. TUNCEL (Turkey) said that the meaning of the term "States participating" must be based on objective criteria and that a declared intention to attend the Conference was not enough to constitute actual participation. He believed that only a State which sent a delegation to the Conference could be deemed to be participating.
24. He suggested that the Credentials Committee should report periodically to the Conference, informing it of the number of participants at the time of reporting. At the same time, delay by Governments in forwarding credentials did not mean that their representatives could not participate.
25. The CHAIRMAN agreed that credentials were the only recognized instrument for acknowledging a representative's authenticity. The credentials could be submitted, however, without delegations appearing. The suggestion by the representative of Turkey would entail regular meetings of the Credentials Committee; it therefore appeared that the document listing the participants at the Conference might have to be relied on.
26. Mr. DUDGEON (United Kingdom) suggested that the definition should read: "The term 'States participating' in relation to any particular session of the Conference means any State whose representatives have been registered by the Secretariat of the Conference as participating in that session and which has not subsequently notified the Secretariat of its withdrawal from that session."
27. The CHAIRMAN pointed out that it was all but impossible to establish the actual fact of participation.
28. Mr. TUNCEL (Turkey) said that the important element of credentials was not mentioned in the United Kingdom proposal. Mere registration was not enough to determine that a given delegation's representation was valid. The credentials should be submitted.
29. The CHAIRMAN pointed out that if the criterion of credentials was applied, many representatives would not be able to vote, since many Governments were late in submitting credentials.
30. Mr. JEANNEL (France) said that the comment just made by the representative of Turkey was indeed relevant from a strictly legal standpoint. In practice, however, there were occasions when delegations participated in conferences without having submitted credentials. The General Committee should therefore find a way of settling the question which would be based on practical considerations. Voting was one way for a delegation to indicate its actual participation. It appeared that the United Kingdom proposal was the only way of settling the matter fairly and systematically; he therefore appealed to the Committee to accept that reasonable proposal, which seemed to meet the concerns of all who had spoken.
31. The CHAIRMAN said that the Rapporteur-General had suggested the following addition to the United Kingdom proposal: "... subject to the provisions of rules 1-5 of the rules of procedure".
32. Mr. KNOKE (Federal Republic of Germany) supported the United Kingdom proposal, since it took account of the idea of physical presence.
33. Mr. BEESLEY (Canada), Chairman of the Drafting Committee, said that the United Kingdom proposal entailed a slight difficulty in that it would appear to place the obligation of registration on the Secretariat rather than on the Credentials Committee. Perhaps the words "duly accredited" could be added before the word "representatives" and the following words added at the end of the sentence: "... and whose credentials have not been rejected by the Credentials Committee".
34. The CHAIRMAN pointed out that even with the words "duly accredited" a representative might register without submitting his credentials.
35. Mr. KHARAS (Pakistan) said that while the United Kingdom proposal seemed to meet all requirements, it would place the obligation of registration on the Secretariat, whereas the Secretariat would not have the obligation to take any action with respect to the withdrawal of a State. Perhaps the following wording could be used: "... means any State whose representatives have registered themselves with the Secretariat ...". There was no need to insist on credentials merely to define the term "States participating".
36. Mr. YANKOV (Bulgaria) said that the amendments proposed by the representative of Pakistan and the Rapporteur-General to the United Kingdom's original proposal took care of the matter of credentials and his delegation therefore agreed with them.
37. Mr. STEVENSON (United States of America) suggested that the matter of accreditation might be dealt with by using the following words: "... means a State which is represented at that session by one or more representatives who are entitled to participate in the Conference and have registered themselves with the Secretariat ...".
38. Mr. TUNCEL (Turkey) said that his delegation was satisfied with the addition proposed by the Rapporteur-General. It meant that the Conference, when it received the report of the Credentials Committee, would decide if the credentials were valid under rule 4 of the draft rules of procedure. He wished to point out, however, that the Secretariat was being given even broader powers than the Credentials Committee, for the list of participants prepared by the Secretariat would be the basis for determining participation.
39. The CHAIRMAN said that that would not be the case. It would be left to the representatives to register themselves.
40. Mr. SUGIHARA (Japan) said that there would be difficulties in registering since the registration office was open only for a few hours. Perhaps it should be open on a 24-hour basis and the Secretariat should be prepared to accommodate representatives who arrived late.
41. The CHAIRMAN said that a register could be placed in the Conference room itself.
42. Mr. JACOVIDES (Cyprus) said that while he would not press the matter, perhaps the following could be added at the end of the United Kingdom proposal: "... unless it is clearly established that the said representatives have left the site of the Conference and are not actually in the country where the session is being held at the relevant time".
43. The CHAIRMAN said that the suggestion by the representative of Cyprus would give the Secretariat the almost impossible task of determining whether or not a representative had left the country. He was therefore glad that he was not pressing that suggestion.
44. Mr. DUDGEON (United Kingdom) said that the representative of Turkey had raised a valid point but that the matter had been covered by the suggestion of the Rapporteur-General. The United States amendment had also been taken care of by the Rapporteur-General's suggestion, which could

perhaps be amended to read “. . . without prejudice to rules 1-5 of the rules of procedure . . .”. Furthermore, with respect to the concern mentioned by the representative of Turkey, there was a clear distinction between the powers of the Credentials Committee and those of the Secretariat.

45. Mr. STEVENSON (United States of America) withdrew his proposed amendment.

46. Mr. ARIAS SCHREIBER (Peru) said that there was the possibility of a representative who was present at the Conference informing the Secretariat of his intention to leave and to return towards the end of the session. There could be an important vote during the period of his absence and there should therefore be a provision in the United Kingdom proposal whereby the Secretariat could inform the Conference of any such temporary withdrawal.

47. Mr. NJENGA (Kenya) said that the representative of Cyprus had raised a valid point. A delegation might register at the Conference, stay for a few weeks, and then quietly leave without informing the Secretariat. States had to register, since otherwise they would not be admitted, but there was normally not much fanfare associated with leaving. That difficulty was not met by the United Kingdom proposal, which would allow absentees to continue to vote *in absentia*. Perhaps, therefore, the Secretariat should be allowed to learn of the absence of a delegation by means other than notification by the delegation itself. He suggested adding to the United Kingdom proposal the phrase “and the Secretariat has not subsequently become aware of its withdrawal from that session”.

48. The CHAIRMAN said that there was no practicable means by which the Secretariat could become aware that a delegation had been withdrawn. It was impossible to close every loop-hole in the proposed definition.

49. Mr. NGENGA (Kenya) said that he did not think that presented a difficulty. Perhaps the Secretariat should have the obligation of finding out whether a delegation was participating.

50. The CHAIRMAN said he still did not see what procedure the Secretariat would use. It might send a cable to the Government involved, and receive no reply, and in the meantime a vote might be taken.

51. He suggested that the Committee should adopt the United Kingdom proposal, adding the phrases “subject to rules of procedure 1 through 5” and “without prejudice to the powers and functions of the Credentials Committee”, and incorporating the suggestion of the Peruvian representative.

52. Mr. MOTT (Australia) supported that suggestion.

53. Mr. ENGO (United Republic of Cameroon) appealed to the representatives of Cyprus and Kenya not to press their suggestions. It was within any delegation's prerogative to be absent from the Conference if it so chose.

54. Mr. JEANNEL (France) said he agreed with the representative of the United Republic of Cameroon. The suggestion of the Kenyan representative, while it raised an important point, amounted to giving the Secretariat decision-making power and infringing on the powers of the Credentials Committee. As the Turkish representative had observed, the Secretariat's powers should not extend that far, and should be confined to registering delegations. He therefore felt that the formulation suggested by the Chairman was adequate.

55. The CHAIRMAN said that giving decision-making power to the Secretariat would infringe not only on the powers of the Credentials Committee but also on the privacy of delegations.

56. Mr. BARNES (Liberia) said he supported the United Kingdom proposal, with the modifications suggested by the Chairman.

57. The CHAIRMAN said he believed the Committee had arrived at an acceptable formulation, namely, to replace the proposed three-paragraph definition by a single paragraph which would read:

“Subject to rules 1 through 5 of the rules of procedure and without prejudice to the powers and functions of the Credentials Committee, the term ‘States participating’ in relation to any particular session of the Conference means any State whose representatives have been registered by the Secretariat of the Conference as participants in that session and which has not subsequently notified the Secretariat of its withdrawal from that session or from part of it”.

58. If he heard no objection, he would take it that that version was acceptable to the Committee.

The proposed new rule was adopted.

59. The CHAIRMAN said that he would try to have the proposed definition circulated to delegations in time for consideration at the afternoon meeting of the plenary Conference. It could be acted upon then unless delegations needed more time to consider it.

60. He appealed to the Chairmen of the Main Committees to expedite their work, especially by considering specific proposals rather than engaging in general discussions.

The meeting rose at 10.40 a.m.

3rd meeting

Monday, 22 July 1974, at 9.20 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Progress of work: statements by the Chairmen of the Committees

1. Mr. ENGO (United Republic of Cameroon), Chairman of the First Committee, reporting on the progress made by that body, said that it had now concluded a type of general debate enabling delegations non-members of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction to express their views on outstanding problems and providing an opportunity for the remaining delegations to state their current views on those problems. About 80 speakers had participated in the debate.

2. The Committee now had moved to the second stage of its work, namely the holding of informal meetings in order to clarify the misgivings of delegations concerning documents circulated after the Geneva session, and to remove as many square brackets as possible, leaving those alternatives that would be the subject of negotiations at a later stage. While he could not yet confirm that the Committee was making progress, he could state that it was making a maximum effort.

3. Mr. AGUILAR (Venezuela), Chairman of the Second Committee, said in his progress report that, in accordance with the decision taken at the first meeting of that body, the items