

Third United Nations Conference on the Law of the Sea

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Summary Records of Plenary Meetings 10th plenary meeting

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the Conference, but agreed with the President's suggestion that it should try to agree on some deadline.

54. Mr. JAGOTA (India) recalled that the Conference had already followed the rules of procedure of the General Assembly when electing its officers. The question arose of the rule to be used when adopting its rules of procedure. The text of a convention was a substantive matter of law, but the rules of procedure were a procedural matter. It was clear from the gentleman's agreement that the General Assembly wished the Conference to make every effort to reach a consensus on matters of substance. If the rules of procedure constituted a substantive question, a consensus was therefore essential. If no consensus was possible a decision would have to be taken by vote. He therefore agreed with the view expressed by the President that if no consensus was achieved, a decision should be taken by vote.

55. Mr. WARIOBA (United Republic of Tanzania) said that the task of the Conference was to complete its agenda, including the adoption of rules of procedure. In the view of his delegation the Conference should continue its efforts to find a consensus.

56. Mr. AGUILAR (Venezuela) said that he agreed with the representative of the United Republic of Tanzania that the first phase of the Conference should not conclude without the adoption of the rules of procedure for the Conference. The draft rules of procedure had been circulated on 16 November 1973 and all delegations had had sufficient time to study them carefully. The differences of view related mainly to voting procedures in the Committees and the majority required in votes in the Committees and in plenary. The positions of delegations were so familiar that there was no need to have a very lengthy discussion on them. What was needed was the political will to reach agreement. His delegation felt that there was in fact a desire to reach unanimity if possible, or at least an agreement acceptable to most delegations. Despite the fact that the gentleman's agreement did not extend to matters of procedure, an effort should perhaps be made to reach a consensus on the draft rules of procedure. However, if it proved impossible to reach a consensus, a vote would have to be taken by a simple majority. His delegation believed that it would be unforgivable if the Conference found itself obliged to reopen the question of the rules of procedure in Caracas.

57. Mr. ZOTIADES (Greece) said that his delegation considered that the question of the draft rules of procedure should be treated on the same basis as matters of substance, in view of the critical importance of the Conference. The failure of the two previous Conferences on the Law of the Sea should be an argument in favour of avoiding the mistakes of those Conferences. If the forthcoming Conference was to be successful the rules of procedure would have to satisfy as many delegations as possible, and a consensus would be most desirable. However, if that proved impossible, then the broadest possible majority

should be adopted since that would be closer to the idea of a consensus than a simple majority.

58. Mr. GLEISSNER (Austria) said that his delegation felt that the Conference should seek first to achieve a consensus; if that were not possible it would perhaps be advisable to decide by consensus to vote.

59. Mr. LING Ching (China) said that his delegation felt that a discussion of the draft rules of procedure should continue with a view to achieving a consensus. However, if no consensus could be reached, the Committee should take a vote. It believed that the Conference ought to complete its work and should not on any account be obliged to resume its discussions on procedure at Caracas.

60. The PRESIDENT suggested that after the remaining draft amendments had been introduced on the following day, he should meet the sponsors in order to attempt to narrow down areas of disagreement.

61. Mr. WEHRY (Netherlands) supported that suggestion.

62. Mr. ENGO (Cameroon) felt that the Conference was being treated to a new dimension in the definition of democracy. The word "consensus" had been belaboured considerably and if the Conference was to agree on its rules of procedure, time was of the essence. He did not think that the Conference should view its inability to reach a consensus in terms of time. While all delegations wished to accommodate the views of the minority, rule by the minority was dangerous. In his view, the Conference was dissipating valuable negotiating time, and he therefore wished to make a formal proposal for the adjournment of the meeting.

Appointment of the Credentials Committee (concluded)*

63. The PRESIDENT said that, following consultations with members of the various regional groups, he wished to propose that the Credentials Committee be composed of the following nine members: Austria, Chad, China, Costa Rica, Hungary, Ireland, Ivory Coast, Japan and Uruguay. If he heard no objection, he would take it that the Conference agreed to that composition.

It was so decided.

64. The PRESIDENT said that he also wished to suggest that, for the current session of the Conference, the rules of procedure of the General Assembly concerning the Assembly's Credentials Committee should apply to the Credentials Committee of the Conference. If he heard no objection, he would take it that the Conference agreed to that procedure.

It was so decided.

The meeting rose at 7 p.m.

*Resumed from the 7th meeting.

10th meeting

Friday, 14 December 1973, at 11.20 a.m.

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

Adoption of the rules of procedure (A/CONF.62/2 and Add.1 and 2, A/CONF.62/4-13) (continued)

1. The PRESIDENT, after announcing that Madagascar had become a sponsor of the amendments contained in document A/CONF.62/4, invited those members of the Conference who

had not yet done so to introduce amendments to the draft rules of procedure (A/CONF.62/2 and Add.1 and 2.). The Conference would then adjourn in order to enable the sponsors of amendments to carry out the necessary consultations for finding points of agreement, with a view to arriving at a decision on the draft rules of procedure.

2. Mr. RAKOTOSIHANAKA (Madagascar) congratulated Mr. Amerasinghe on his election to the office of President of the Third United Nations Conference on the Law of the Sea and assured him that his delegation would contribute fully to its work.
3. Introducing the amendments contained in document A/CONF.62/12, on behalf of Mauritius, the United Republic of Tanzania and Madagascar, he stressed that they were uncomplicated amendments, which should not give rise to controversy. The first of those amendments would replace the wording of rule 14 by the wording of rule 39 of the rules of procedure of the General Assembly of the United Nations, so as to specify clearly the role of the General Committee, which, in his delegation's view, should be confined to the tasks of organization and co-ordination. His delegation, which was an upholder of democratic principles, could not support the principle of giving the General Committee powers of decision-making or veto, which belonged exclusively to representatives of States to the Conference; consequently, it could not support the amendments proposed in document A/CONF.62/6, which would make recourse to voting and the activities of the Committees dependent on the goodwill of the General Committee.
4. The purpose of the amendment to rule 20 was to avoid placing the Secretariat in a difficult position by specifying that it would be called upon to make statements concerning questions under consideration by the Conference only when expressly requested to do so by the Conference.
5. The purpose of the proposed amendments to rule 32 was to clarify the wording of the draft rules of procedure by specifying that no proposal could be considered unless copies of it had been circulated in all working languages.
6. Rule 39 would gain in clarity and precision if the text was streamlined. The ideas contained in it could be expressed more simply and in two paragraphs.
7. Lastly, with regard to rule 55, his delegation felt that it was normal for the Chairman to report to the Committee on progress achieved but that the officers should not be given the right to make judgements of capital importance, as was provided in the Secretariat text. For that reason, his delegation proposed the deletion of the second part of the last sentence.

8. Turning to the question of voting, he wished to make some comments on the consensus system, about which there had been much talk since the opening of the Conference. In practice, it could be noted that that procedure was used to safeguard privileges and slow down the search for generally acceptable solutions. His delegation had accepted the gentleman's agreement approved by the General Assembly (see A/CONF.62/2) and would spare no efforts to arrive at a consensus, but it wished to ensure equality of rights and considered that consensus, which was a means and not an end, should in no event replace voting and result in a right of veto. It was a concept difficult to define, which was not a rule of law and should therefore not be included in the rules of procedure of the Conference but annexed to them.

9. Mr. BAKULA (Peru) congratulated the new President of the Conference, whose abilities and experience were well known.

10. All delegations had recognized that the problems of the law of the sea were interrelated and should receive equal treatment. That consideration, which was, moreover, set forth in the gentleman's agreement approved by the General Assembly, had prompted his delegation to propose the amendment contained in document A/CONF.62/13, to insert after rule 44, a new rule on the joint voting on related proposals. That amendment would make it possible, on the one hand, to consider related questions jointly, and, on the other, to ensure that agreements were adopted by a consensus reflecting the general opinion.

11. With regard to the principle of consensus, he stressed that it had been recognized that the new rules to be elaborated concerning the law of the sea should not be imposed by a single group of countries, but should be supported by all countries, whatever their situation and their degree of development. It had also been observed that a State could not be obliged to accept, in a convention, provisions which had been adopted against its will and which were contrary to its sovereign rights.

12. The PRESIDENT suggested that the members of the Conference should proceed immediately to consultations on the amendments proposed.

It was so decided.

The meeting rose at 11.50 a.m.

11th meeting

Friday, 14 December 1973, at 5.40 p.m.

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

Results of informal consultations

1. The PRESIDENT said that the consultations held, pursuant to his statement at the previous meeting, with the sponsors of the various amendments and other interested parties had demonstrated that progress had been made and that there was a distinct possibility that the Conference could reach agreement on the central issue, namely, that of the gentleman's agreement and the appropriate manner to give effect to it. There had been a suggestion that the spirit of the gentleman's agreement should be reflected in a Conference resolution, while

the ways and means of putting it into effect would be reflected in appropriate rules of procedure.

2. After a discussion in which Mr. JEANNEL (France), Mr. KRISHNADASAN (Zambia), Mr. WARIOBA (United Republic of Tanzania), Mr. CASTANEDA (Mexico) and Mr. WAPENYI (Uganda) took part, the PRESIDENT noted that, while some delegations wished to keep open the possibility of further meetings the following Monday, others were opposed to such an extension of the current session.

The meeting rose at 6.55 p.m.