

Third United Nations Conference on the Law of the Sea

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/SR.13

Summary Records of Plenary Meetings 13th plenary 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)

15. Mr. STEVENSON (United States of America) said that in view of the statements of previous speakers, his delegation wished to place on record the views of his Government: the Governments of the Republic of Viet-Nam and the Khmer Republic were the only legitimate representatives of South Viet-Nam and the Khmer Republic respectively.

16. Mr. MAU PHAT (Khmer Republic) said that, certain delegations having attempted to challenge the credentials of his Government at the Conference, he wished to point out that his Government's credentials were in order under rule 27 of the rules of procedure of the General Assembly. His delegation, which had been invited to attend the Conference by the Secretary-General in accordance with General Assembly resolution 3067 (XXVIII), was composed of jurists and technicians so that it could discuss questions related to the law of the sea. He thought all would agree that in technical matters there were no traitors or cliques. With respect to the question of inviting the so-called Royal Government of National Union of Cambodia to the Conference, he observed that the Government of the Khmer Republic was the only Khmer Government recognized by the United Nations and, consequently, only the representatives of the Government of the Khmer Republic were qualified to represent the Khmer people at any conferences

organized by the United Nations. He therefore strongly protested the assertion that the so-called Royal Government of National Union of Cambodia should have been invited.

17. Mr. WAPENYI (Uganda), speaking as Chairman of the African group, endorsed the reservations of the representative of Chad as set forth in paragraph 9 of the report of the Credentials Committee regarding the minority Government of South Africa and the colonial aspirations of Portugal in Africa. Those two countries were not the legitimate representatives of the peoples of South Africa or of Mozambique, Angola or other areas under Portuguese domination.

18. Mr. FERNANDES (Guinea-Bissau) said that his delegation did not recognize Portugal's capacity to represent the peoples of Mozambique, Angola, Cape Verde and the other Territories under Portuguese domination. It associated itself with the statements expressed in paragraphs 5, 6 and 9 of the report of the Credentials Committee.

19. The PRESIDENT said that if he heard no objections, he would take it that the Conference approved the report of the Credentials Committee.

It was so decided.

The meeting rose at 1.10 p.m.

13th meeting

Saturday, 15 December 1973, at 4.30 p.m.

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

Adoption of the rules of procedure (A/CONF.62/2 and Add.1-3, A/CONF.62/4-14) (continued)*

1. The PRESIDENT said that during the last few days he had held informal consultations on the draft rules of procedure (A/CONF.62 and Add.1-3) which had a bearing on the gentleman's agreement. Proposers of amendments to the draft rules and others interested in the subject had participated in the consultations. The gentleman's agreement, as recorded in the proceedings of the General Assembly at its 2169th meeting held on 16 November 1973, read as follows:

"Recognizing that the Third United Nations Conference on the Law of the Sea at its inaugural session will adopt its procedures, including its rules regarding methods of voting, and bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole and the desirability of adopting a Convention on the Law of the Sea which will secure the widest possible acceptance, the General Assembly expresses the view that the Conference should make every effort to reach agreement on substantive matters by way of consensus; that there should be no voting on such matters until all efforts at consensus have been exhausted; and further expresses the view that the Conference at its inaugural session will consider devising appropriate means to that end."

2. The consultations had failed to devise appropriate means to that end. As there was not sufficient time to proceed with the consultations and as there was no prospect of their yielding fruitful results, he proposed to invite to informal consultations proposers of amendments to the draft rules and others interested in the subject in order to reach as much agreement as possible on the subject. The informal consultations would be held in New York and would take place from 25 February to 1 March 1974. If necessary, further meetings would be held for the purpose of the informal consultations. He further proposed

that the decision in regard to the rules of procedure should be taken by the Conference in Caracas not later than 27 June, if necessary by voting. Members were requested to send in their amendments to the draft rules of procedure not later than 31 January 1974.

3. Mr. DE SOTO (Peru) asked whether the President was intending to hold the informal consultations on his own initiative.

4. Mr. BONNICK (Jamaica) said that his delegation shared the concern implicit in the question put by the representative of Peru. He was not questioning the President's prerogatives, but it would be better for the Conference itself to take a decision on consultations, so that the decision would be binding. The consultations should be conducted not on an informal basis, but within the framework of an organ of the Conference—for example, the General Committee—or by representatives of the regional groups. A decision to vote on the rules of procedure should be a decision of the Conference requiring a two-thirds majority for reversal.

5. The PRESIDENT said that he did intend to hold the consultations on his own initiative. He did not think it was feasible to set up a formal group. His aim was to resolve the difficulties informally, and he would report on the consultations at the beginning of the Caracas session.

6. Mr. THOMPSON-FLORES (Brazil) said that his delegation could not support any proposal for a formal meeting of the Conference before the Caracas session. He suggested that the Conference should take a decision on the second part of the President's proposal, namely, that the rules of procedure should be adopted, by voting if necessary, before 27 June. Once that decision had been taken, the President would be free to hold informal consultations to ease the way for the adoption of the rules of procedure.

7. The PRESIDENT observed that there had been no proposal for an inter-sessional meeting.

*Resumed from the 10th meeting.

8. Miss FLOURET (Argentina) said that the rules of procedure were too important a matter to be dealt with by a small group. Her delegation supported the proposal that the rules of procedure should be adopted during the first week of the Caracas session. If the Conference was to avoid another protracted debate as at the present session, it must decide what rules were to be applicable to the debate on, and adoption of, its rules of procedure. She therefore proposed that the Conference should decide to apply the rules of procedure of the General Assembly for those purposes.

9. Mr. AGUILAR (Venezuela) said his delegation had always insisted that the Conference should complete its consideration of procedural matters at the present session. It greatly regretted the failure to do so and felt that a special session should be held either in New York or at Geneva to solve the procedural problems before the Caracas session. However, in a spirit of compromise, his delegation would accept the President's proposal that a final decision should be taken by 27 June and that informal consultations should be held to ease the way for that decision.

10. He agreed with the representative of Argentina that it must be made clear which rules of procedure were to be applicable to the consideration and adoption of the Conference's own rules of procedure. His delegation would support the President's proposals on the understanding that, if there was no agreement by 27 June, a decision would be taken by a simple majority vote.

11. The PRESIDENT pointed out that, where procedural matters were concerned, rule 85 of the rules of procedure of the General Assembly provided for decisions to be taken by a simple majority of the members present and voting.

12. Mr. AKE (Ivory Coast) suggested that the Conference should set up a working group, perhaps composed of the members of the General Committee or the Drafting Committee, to meet informally two or three days before the Caracas session to review amendments to the rules of procedure and try to draw up versions on which there was a measure of agreement, thereby simplifying the work of the first week of the session. His delegation supported the Argentine proposal.

13. The PRESIDENT requested the representative of the Ivory Coast not to press his suggestion. He intended that the consultations should be as flexible as possible: any delegation to the Conference or any regional group would be free to participate in them. There was no need to set up a formal working group.

14. Mr. STEVENSON (United States of America) said that his delegation was concerned at the course the discussion was taking. The Conference seemed to be resigning itself to solving its procedural problems by voting rather than by consensus. To take decisions by voting on matters on which there was fundamental disagreement would have an adverse effect on the work of the Conference. His delegation supported the President's proposal concerning informal consultations; the emphasis must be on trying to reach a consensus, and voting must be considered only a last resort.

15. The PRESIDENT said that the whole point of the informal consultations was to exhaust all efforts at consensus. It was safe to say that by June all reasonable efforts would have been exhausted. That was the reason for the provision that a final decision should be taken by 27 June. In any event, that provision would stimulate the Conference to reach a consensus agreement.

16. Mr. HARRY (Australia) said that his delegation supported the President's proposals but was worried by one aspect of the Argentine proposal. Any decision which the Conference took on the matter must be framed in such a way as to encourage consensus rather than intransigence. All delegations were trying to reach an agreement commanding at least wide, if not universal, support. The Conference should not, therefore,

bind itself to take a decision on the rules of procedure by a simple majority vote. His delegation would accept, provisionally, a proposal that the rules of procedure of the General Assembly, or even the Conference's own draft rules of procedure, should apply. But the adoption of the rules of procedure was a very important matter requiring, under rule 85 of the rules of procedure of the General Assembly, a two-thirds majority. His delegation would therefore accept the Argentine proposal, provided it was stipulated that any decision on the rules of procedure that was put to the vote would require a two-thirds majority.

17. The PRESIDENT noted that under the rules of procedure of the General Assembly a decision to regard a question as important would require a simple majority of the members present and voting.

18. Mr. BEESLEY (Canada) said that, while appreciating why the President had felt it necessary to make his proposal, his delegation would have preferred to attempt to reach a broad agreement at the current session. However, if it was the general feeling that all efforts at consensus had been exhausted, his delegation would accept the President's proposal, although with regret. Most of the meetings held at the current session had been devoted to the election of the officers of the Conference and not to the vital question of the adoption of its rules of procedure. His delegation would be willing to accept a second-best solution and agree provisionally that the rules of procedure of the General Assembly or the draft rules of procedure contained in document A/CONF.62/2 and Add.1-3 should be applied to the adoption of the rules of procedure of the Conference, provided that there was a clear understanding regarding the deadline for the adoption of the rules of procedure and that there would be no more filibustering.

19. His delegation would find it difficult to explain to its Government why no decisions had been taken at the current session. While one week of the Caracas session might be set aside for a procedural discussion, it would be totally unreasonable to spend longer than that on non-substantive questions. The situation was a grave one. More trust and good faith were needed. The exercise in which the Conference was engaged was perhaps the most momentous since the drafting of the United Nations Charter itself. His own delegation had worked extremely hard for the Conference and had a large stake in it, but it was not prepared to continue indefinitely with negotiations accompanied by an implied threat that, if things were not done in a certain way, the Conference might not be attended by certain delegations. With regard to the suggestion that consultations regarding the rules of procedure should be held before the Conference met at Caracas, he pointed out that his delegation, like many others, had no qualified experts available to be on the spot for consultations with the President. There were other acceptable solutions which could have been adopted, had there been greater respect for the principle of State sovereignty. However, as the majority of the participants in the Conference wished to conclude the current session without a final resolution of procedural matters, his delegation would not object to the establishment of a working group to consider the question of the rules of procedure, although it did not know whether it would itself be able to participate.

20. At the Caracas session, his delegation would not accept filibustering by any delegation. If, by the deadline set, it had not proved possible to reach a consensus on the rules of procedure, his delegation would wish the question to be put to a vote. Any solutions arrived at must, of course, be reached by negotiation; otherwise they would not be viable. There was, in fact, every reason to hope that genuine negotiation, resulting in broadly acceptable consensus decisions, would prove possible.

21. The PRESIDENT said he regretted that efforts made so far to reach a consensus concerning the rules of procedure had failed. It was for that reason that he had been obliged to make his initial proposal. He would exert the utmost efforts in the

proposed consultations to take into account the views and positions of the greatest possible number of delegations.

22. Mr. MEDJAD (Algeria) said that, ever since the beginning of the current session, all delegations had endeavoured to apply the gentleman's agreement appended to the draft rules of procedure. However, varying interpretations appeared to have been placed upon it. He recalled that the Special Representative of the Secretary-General had endorsed the President's view that the question of the adoption of the rules of procedure of the Conference was a purely procedural matter and should therefore be decided by a simple majority. There was ample time before 20 June 1974 for delegations to smooth out difficulties, with the help of the President's great skill as a negotiator. However, if the negotiations and consultations had produced no results by 27 June 1974, the Conference would have to take a definite decision. Accordingly, he supported the Argentine proposal.

23. Mr. NJENGA (Kenya) said that acceptance of the President's proposal would in itself constitute a major departure from the general understanding that the session of the Conference to be held at Caracas was to be devoted in its entirety to substantive questions. To sacrifice one week of the Caracas session to procedural matters was a major concession. He sincerely hoped that 27 June 1974 really would be the final deadline for the settlement of procedural questions. On that understanding, his delegation was willing to co-operate fully in any consultations that might be held. He proposed that, if the Conference accepted the President's proposal, it should be reproduced *in extenso* in the summary record of the current meeting, in order to avoid any further overstepping of deadlines.

24. His delegation did not interpret the gentleman's agreement as meaning that the Conference should expect to reach unanimous agreement on every point. His delegation fully agreed with the Argentine proposal that, for the purpose of the adoption of the rules of procedure of the Conference, the rules of procedure of the General Assembly should apply and that the question should be decided in accordance with rule 85 of the rules of procedure of the General Assembly by a simple majority, unless the Conference decided that it was an important question requiring a decision by a two-thirds majority.

25. Mr. LING Ching (China) said his delegation believed in the principle that all delegations should participate equally in all decision-making relating to the Conference. His delegation was not opposed to exerting every effort to arrive at a consensus. The consultation methods proposed by the President were one way of reaching a solution of the procedural question under discussion. However, if the proposed consultations were held with the participation of a few countries only and the resulting decision was then put before the Conference as a whole as a *fait accompli*, that would be unreasonable. Accord-

ingly, he could support the Argentine proposal that, prior to the Caracas session, the Conference as a whole should take a decision on the rules of procedure. Alternatively, he could endorse the Venezuelan view that, before the Conference embarked on a substantive discussion, it should meet, with the participation of all delegations, in order to settle the question of the rules of procedure.

26. Mr. JEANNEL (France) said that his delegation saw no problem in the Conference's setting a deadline for the adoption of its rules of procedure. It would be regrettable if substantive meetings of the Conference were to be devoted largely to endless discussions on that point. The question had been raised whether the Conference's rules of procedure should be adopted by a simple majority or by a two-thirds majority. His delegation did not have any strong feelings on that point. What mattered was not the type of majority by which they were adopted but the spirit in which the question was approached and resolved. Rules of procedure adopted by an authentic majority would ensure the success of the Conference.

27. Mr. ROZENTAL (Mexico) supported the Argentine proposal.

28. Mr. BONNICK (Jamaica) supported the Kenyan representative's suggestion that the President's proposal, if accepted, should be reproduced *in extenso* in the summary record and that the text of the gentleman's agreement should also be reproduced in full in that context. Otherwise it might appear that undue weight was being placed on the principle of consensus. The inclusion of the text of the gentleman's agreement would restore the balance and make it clear that the Conference must have rules of procedure containing provisions for taking decisions by means of voting where necessary.

29. The CHAIRMAN said that, if there was no objection, he would take it that the Conference agreed to his proposal, the text of which was to be reproduced *in extenso* in the summary record.

It was so decided.

30. The PRESIDENT said that, if there was no objection, he would take it that the Conference agreed to adopt the Argentine proposal that the rules of procedure of the General Assembly should be applied to the adoption of the rules of procedure of the Conference, it being understood that their adoption would be by a decision taken by a simple majority, unless the Conference decided that it constituted an important question requiring a decision by a two-thirds majority.

It was so decided.

Closure of the session

31. The PRESIDENT declared the First Session of the Conference on the Law of the Sea closed.

The meeting rose at 5.30 p.m.