

Third United Nations Conference on the Law of the Sea

1973-1982

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Summary Records of Plenary Meetings 8th 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)

50. After a brief exchange of views in which Mr. WARIOBA (United Republic of Tanzania), Mr. ZELAYA (Nicaragua), Miss FLOURET (Argentina), the PRESIDENT, Mr. OFWONO (Uganda), Mr. LING Ching (China) and Mr. SUGIHARA (Japan) participated, Mr. DJALAL (Indonesia), sup-

ported by Mr. HADDAD (Lebanon), proposed that the meeting should be adjourned to allow time for discussions in the regional groups.

It was so decided.

The meeting rose at 7.30 p.m.

8th meeting

Thursday, 13 December 1973, at 11.05 a.m.

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

Adoption of the rules of procedure (A/CONF.62/2 and Add.1) (continued)*

1. The PRESIDENT observed that the manner in which the Conference was referred to in the *Journal of the United Nations* gave the impression that the Conference was a subsidiary body of the General Assembly. If there was no objection, he would take it that it was the wish of the Conference to request the Secretariat that henceforth the material relating to the Conference should be printed under a separate heading.

It was so decided.

2. Mr. CASTAÑEDA (Mexico) said that his delegation agreed with the remarks made by the USSR representative at the 6th meeting concerning the universal character of the substantive rules to be elaborated by the Conference, the need for those rules to be generally acceptable to all groups of States and the inadmissibility of any attempt by one group of States to impose its views on another group. His delegation could not agree, however, to the specific proposals made by the USSR representative, which would have the effect of giving each group of States the right to frustrate the will of the majority by exercising what amounted to a veto over any decision the Conference might take. Indeed, by using its veto, one group would be able to impose its views on others, a possibility against which the USSR representative had warned. The elaboration of universal rules could come about only through a process of negotiation, which would not be facilitated if a few States were given the power to stand in the way of an agreement by the majority.

3. By placing excessive emphasis on the need for consensus, the USSR representative appeared to be mistakenly equating consensus with unanimity. The pitfalls to which the USSR proposal could lead had been clearly illustrated at the last session of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, where a lengthy discussion had resulted from the insistence of the USSR representative that a point of view expressed by several members of the Committee should not be reflected in the report on the session. Such attempts by a single delegation to impede the will of the majority were counterproductive and constituted an ominous precedent. It was also instructive to consider the position of the Soviet Union on the matter of double representation. In that connexion it had been maintained that the special responsibilities of the permanent members of the Security Council entitled them, even in bodies other than the Council, to privileges not enjoyed by other States. His delegation categorically rejected such a claim and supported the formula read out by the Chairman in that respect at the 6th meeting.

4. The Soviet amendment to rule 15 was also unacceptable. It should not be for the General Committee to decide whether or not a vote should be taken in one of the other committees in the

event that all efforts at consensus had been exhausted. If that proposal was adopted, the Conference might find itself deadlocked, as had the codification conferences around the turn of the century where the unanimity rule had prevailed.

5. Like the Latin American group in general, his delegation had supported the gentleman's agreement approved by the General Assembly (see A/CONF.62/2). Every effort should be made to reach agreement on matters of substance by way of consensus. However, once all efforts at consensus had been exhausted, it would be necessary to settle the matter by voting, a two-thirds majority being required in the plenary and a simple majority in other organs. Any committee of the Conference confronted by the problem of determining whether all efforts at consensus had been exhausted should decide the matter itself; there was no need to refer such problems to the General Committee or to the plenary of the Conference. Voting should be resorted to only after thorough consideration of the problem and not on the spur of the moment. In addition, delegations should be given time to reflect before proceeding to the vote. Accordingly, the Latin American group intended to propose an amendment to the rules of procedure whereby the taking of a vote on matters of substance could be deferred to a subsequent meeting. Moreover, votes on matters of substance should be recorded in all cases, indicative votes being used only in connexion with procedural matters. The full text of the amendments would be circulated shortly.

6. Mr. CRISTESCU (Romania) said that his country attached great importance to the Conference, the purpose of which was to prepare a new legal order of the seas and oceans corresponding to the current requirements of development and international co-operation and aimed at promoting economic and social progress throughout the world, especially in the developing countries. If the Conference was to be effective, its decisions and the texts to be drawn up must correspond to the interests of all States. Matters of substance and major issues must be settled in a democratic way with the participation of all States and in accordance with the principle of the equal rights of all States. There should be no delegation of decision-making power from the plenary of the Conference to other, more limited organs or regional groups. The established practice of the United Nations in that regard should be scrupulously respected. The Conference had been convened not as a conference of regional groups or as one which granted special privileges to certain States, but rather as a Conference of sovereign and independent countries with equal rights. In conclusion, he commended the draft rules of procedure prepared by the Secretariat and expressed confidence that the Conference would be able to reach agreement on a satisfactory final text of those rules.

7. Mr. PERISIĆ (Yugoslavia) said that his delegation attached great importance to the decision-making procedures that were to be adopted by the Conference. It agreed with those who felt that only broadly accepted international legal texts would be valid in the sphere of the law of the sea and that every

*Resumed from the 6th meeting.

effort should be made to achieve the broadest possible consensus in the search for solutions to substantive issues. It was in that sense that his delegation interpreted operative paragraph 8 of the resolution on the law of the sea adopted in September by the Conference of Heads of State or Government of Non-Aligned Countries in Algiers, in which stress was laid on the urgent need for the Conference on the Law of the Sea to adopt rules of procedure permitting the rapid achievement of positive results and ensuring the maximum possible degree of agreement.

8. He wished to emphasize, however, that the idea of achieving the maximum possible degree of agreement should not be allowed to impede the progress of work or be used as a kind of veto at the Conference. For that reason, his delegation agreed with those who felt that the rules of procedure should also provide for the possibility of reaching decisions by vote. The most democratic procedure would be to authorize the plenary of the Conference to decide whether certain questions should be put to the vote after all efforts at consensus had been exhausted.

9. Turning to another matter closely connected with the item under consideration, he expressed his delegation's regret that the Provisional Revolutionary Government of the Republic of South Viet-Nam had not been invited to take part in the Conference and that, as a result, the Government of the Democratic Republic of Viet-Nam had refused to accept the invitation addressed to it. His delegation had explained its stand on the question of the participation of the Provisional Revolutionary Government during the general debate on that issue in the First Committee of the General Assembly. He wished to emphasize once more, however, that if the principle of universality was to be implemented consistently and if the Conference was to be fully successful, it was essential that the representatives of all States and all Governments should be enabled to take part in its work.

10. Mr. VINDENES (Norway) said that the Main Committees of the Conference should be authorized to decide for themselves whether or not all efforts at consensus had been exhausted on a given issue.

11. Rules of procedure which made voting at the committee level relatively easy were more likely to facilitate consensus than rules which made voting difficult or impossible. One of the main reasons why the preparatory committee for the Conference had experienced difficulty in achieving consensus was precisely the fact that it had worked under a strict consensus procedure. Delegations taking part in substantive negotiations on matters of great national interest would be more inclined to seek mutual accommodation of interests if they were aware that the alternative to general agreement was a Conference decision by means of a vote. If the texts adopted by the Conference were to be universally binding, it was important to ensure that they reflected the interests of all groups of States. His delegation was convinced that the majority of delegations were aware of the need for broad acceptance of Conference decisions, and did not share the fear expressed by some that rules which made voting relatively easy were likely to be abused by irresponsible majority behaviour.

12. Mr. WARIOBA (United Republic of Tanzania) said that the consultations currently being held in the Asian, Latin American and African groups would result in the proposal of certain amendments to the draft rules of procedure. However, he wished to place on record the position of his own delegation and the African group in general with regard to the draft rules.

13. In the first place, the Conference on the Law of the Sea was of considerable importance to the interests of all States and any major decision of the Conference should be taken by organs on which all States were represented. He therefore envisaged that the main decisions of the Conference would be taken in the plenary or the Main Committees, as appropriate.

Smaller organs, such as the General Committee or the Drafting Committee, should not be empowered to take major decisions.

14. In the second place, there must be a clear division of responsibility between the organs of the Conference. On that point, he agreed with the representative of Norway that the rules of procedure should be amended so as to enable the Main Committees to have autonomy.

15. In the third place, the rules of procedure should as far as possible provide for a speedy method of decision-making while at the same time facilitating negotiation and agreement on formulae acceptable to the largest possible number of States.

16. His delegation felt that the best method of decision-making was the vote, with the traditional requirement of a two-thirds majority at plenary meetings and a simple majority in the Main Committees. It realized, however, that the voting rule might have to be modified to enable States to reach a wide measure of agreement among themselves. One possibility was to provide for a "cooling-off" period before final votes. Whatever voting machinery was introduced, its main purpose should be to facilitate negotiation and consultations for the purpose of obtaining the widest possible agreement. It was inadmissible that a majority should be allowed to enforce its will or that a minority should be empowered to block decisions. A balance had to be struck between those two extremes.

17. Mr. NGUYEN HUU CHI (Republic of Viet-Nam) said that the representative of Yugoslavia, in raising the question of the representation of the so-called Provisional Revolutionary Government of the Republic of South Viet-Nam, had cast doubt on the representative capacity of the Republic of Viet-Nam. He wished to take the opportunity to refute such tendentious assertions once and for all. As an active member of the specialized agencies, his Government had been invited to attend the Conference under the terms of General Assembly resolution 3067 (XXVIII). It had consistently respected the Charter of the United Nations, and as a freely elected Government was qualified to represent the population of South Viet-Nam, unlike the so-called Provisional Revolutionary Government of the Republic of South Viet-Nam.

18. Mr. ZEGERS (Chile) said that the representatives of Mexico, the United Republic of Tanzania, Yugoslavia and others had alluded to the consultations in progress among the developing countries which would lead to the submission of amendments regarding the decision-making machinery in the rules of procedure. The gentleman's agreement adopted by the General Assembly (see A/CONF.62/2) was an objective that should be pursued. However, under the gentleman's agreement, it must be assumed that the rules of procedure would allow for a vote. The rules of procedure proposed by the Secretariat regarding voting procedure made it difficult to vote in the committees of the Conference which must obtain authorization to vote from the plenary. Such authorization would require a two-thirds majority vote, as would a decision regarding closure of debate. Furthermore, the draft rules of procedure proposed that indicative votes rather than recorded votes be taken in the committees.

19. In his delegation's view, and that of most of the developing countries and other delegations, the rules of procedure should make it easy to vote in the committees and difficult to take a definitive vote in the plenary. Such a procedure would facilitate negotiations and make it easier to reach a consensus. It was essential for the success of negotiations to maintain the conventional procedure for voting, namely, a simple majority in the committees and a two-thirds majority in the plenary. The committees must have power to take decisions on the matters with which they were to deal.

20. In addition to the conventional rules, there was nothing to prevent the establishment of a "cooling-off" period in order to avoid hasty voting and allow for further negotiation. However, the rule requiring a two-thirds majority in plenary and a simple majority in committees should be maintained, on the

understanding that every effort would be made to reach a consensus under the gentleman's agreement, and that the adoption of the rules of procedure, with the possible addition of a provision for a "cooling-off" period, should help to achieve a consensus rather than hinder it.

21. Therefore, in his delegation's view, the rules of procedure proposed by the Secretariat should be amended in so far as the decision-making machinery was concerned. The possibility of an indicative vote should be eliminated, since it had no advantages over a straightforward vote in the committees, if it was felt that a definitive vote would give rise to difficulties. However, a recorded vote had the advantage of providing a record and channelling negotiations along more normal lines.

22. The rules of procedure must therefore enshrine the following principles: the committees must be masters of their own procedure; a conventional majority must be established for plenary and committee decisions i.e., a two-thirds majority in the plenary and a simple majority in the committees; there should be no indicative votes; and some machinery should be provided for a "cooling-off" period in order to prevent hasty voting. The rules of procedure must prevent any abuse of the minority and vice versa. The consensus rule in the rules of procedure could be used by any delegation as a veto which would be tantamount to tyranny by the minority. However, the rules of procedure included the gentleman's agreement and the Conference must try to reach a consensus on its decisions.

23. In conclusion, he assured members that the amendments he had referred to earlier would be circulated in writing soon and he hoped that they would receive wide support.

24. The PRESIDENT announced that amendments in writing should be submitted not later than 3 p.m.

25. Mr. OGISO (Japan) pointed out that consultations were still in progress among some delegations which might need further instructions from their Governments. He therefore asked the President to extend the time-limit for the submission of amendments until the following morning.

26. The PRESIDENT said that any delegation could make oral amendments at a later stage, but that all formal amendments must be submitted in writing by 3 p.m., in view of the limited time available.

27. Mr. SANDERS (Guyana) asked for clarification regarding rule 61 which stated that "at the close of any private meeting a communiqué may be issued to the press through the Executive Secretary". However, the rules of procedure made no reference to the procedure regarding public meetings. In his delegation's view, the fullest possible information should be given to the press. He asked whether the services of the United Nations Office of Public Information would be made available continuously throughout the Conference so that the public and delegations could be kept informed of the proceedings.

28. The PRESIDENT assured the representative of Guyana that the services of the Office of Public Information would be available throughout the Conference. It was normal practice to issue regular communiqués to the press on public meetings, but not on private meetings. That was why a special reference was made to private meetings in the rules of procedure.

29. Mr. HARMON (Liberia) said that his delegation supported the holding of the Conference and would participate in the work involved. The Conference would deal with the important issue of the sovereign rights of States and, if properly conducted without the use of power politics, it would open up a new area of co-operation among nations. The draft rules of procedure provided a good basis for conducting the Conference, although there was room for further improvement. Since some of the world's best intellects would be participating in the Conference, they would ensure that the principle of the sovereignty of States was recognized under international law.

30. Mr. CASTAÑEDA (Mexico) said that his delegation required some clarification from the Secretariat on rule 63 of the draft rules of procedure. For the purposes of the Conference, international non-governmental organizations which dealt with matters related to the law of the sea should participate. Such organizations had put forward interesting proposals in the past. However, the rules of procedure did not explain which non-governmental organizations would be invited to participate in the Conference. Many of the non-governmental organizations which had consultative status with the Economic and Social Council did not deal with matters related to the law of the sea. However, other non-governmental organizations which did not have such status could usefully participate in the Conference. He would like the Secretariat's view on that matter.

31. Mr. NJENGA (Kenya) said that his delegation attached particular importance to the participation of non-governmental organizations in the Conference. It therefore hoped that their participation would not be limited merely to attending the Conference and public meetings, but that they would also be permitted to make statements at the invitation of the Chairmen of the Committees or the President of the Conference. If such a procedure was not envisaged, he suggested that rule 63 of the rules of procedure should be revised so that the representatives of international non-governmental organizations could participate in discussions.

32. The PRESIDENT said that the Secretariat would reply to the points raised by the representatives of Mexico and Kenya at the following meeting.

33. Mr. KOVALEV (Union of Soviet Socialist Republics), exercising his right of reply, said that an attempt had been made to dispute the right of the Provisional Revolutionary Government of the Republic of South Viet-Nam to attend the Conference. That matter had no relevance to the item under discussion, and he categorically rejected the attacks upon the Provisional Revolutionary Government of the Republic of South Viet-Nam. His Government and delegation whole-heartedly endorsed the statement contained in the cable sent to the Secretary-General by the Minister for Foreign Affairs of the Democratic Republic of Viet-Nam¹ which stated that the Provisional Revolutionary Government of the Republic of South Viet-Nam had full legal competence to participate in all international conferences and organizations, including the Conference on the Law of the Sea.

The meeting rose at 12.20 p.m.

¹ See document A/9350 of 27 November 1973.