

# **Third United Nations Conference on the Law of the Sea**

1973-1982

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Document:-

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## **111<sup>th</sup> Plenary meeting**

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XI (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Eighth Session)*

structive suggestion at an earlier session. Moreover, his country had reached positive conclusions on the question of training personnel, a question which had been mentioned earlier by the Chairman of the First Committee, and would discuss the matter later in the appropriate negotiating group. His Government was fully prepared to participate in appropriate arrangements to help train prospective key personnel for the Authority and the Enterprise during the period between the adoption and the entry into force of the convention, so that such personnel could acquire the necessary skills and the Authority could play its role effectively under the convention when the latter came into force.

61. Mr. MAZILU (Romania) said that he fully supported the statement made by the representative of Honduras on behalf of the Group of 77. The common heritage of mankind should be exploited by all countries, and their participation in the exploration and exploitation of the international sea-bed area was a fundamental question of principle. The Conference had before it the important task of negotiating and adopting a convention that would ensure such participation not only in sea-bed exploration and exploitation but also in profit-sharing.

62. His delegation hoped that better results would be achieved at the present session and that the text adopted would reflect the interests of every country and a desire for co-operation in the exploitation of marine resources for the purpose of building a new international maritime order.

63. Mr. BENCHIKH (Algeria) said that it was not possible to expect a successful outcome to the session or successful implementation of the future convention if the Conference failed to consider in great detail the very important question of transfer of technology and of professional training in the expertise required for exploration and exploitation of the resources of the sea-bed. As pointed out earlier, certain recommendations had already been made in that connexion at the special session of the Council of Ministers of the Organization of African Unity held in March 1979. Accordingly, he supported the statement made by the Chairman of the First Committee and requested that it should be reproduced *in extenso* in the summary record. In addition, the resolutions con-

cerning the law of the sea adopted at the recent special session of the Council of Ministers of the Organization of African Unity should be issued as a document of the Conference.

64. The PRESIDENT said that, if there was no objection, he would take it that the Conference wished the statement by the Chairman of the First Committee to be reproduced *in extenso* in the summary record.

*It was so decided.*

65. The PRESIDENT said he had been informed that, in accordance with an understanding reached earlier concerning the composition of the General Committee, the delegation of Belgium should replace the delegation of Ireland in the capacity of Vice-Chairman of the General Committee. If he heard no objection, he would take it that the Conference agreed to take that course.

*It was so decided.*

66. Mr. KOZYREV (Union of Soviet Socialist Republics) drew attention to the fact that a seat had been reserved in the Conference room for so-called Democratic Kampuchea; but everyone was aware that a popular uprising had overthrown the despotic régime of Pol Pot. The country had been proclaimed a People's Republic and now had a legitimate Government which enjoyed the full support of the Kampuchean people, had received widespread international recognition and was the only Government that could represent the Kampuchean people at the Conference. The Pol Pot clique no longer represented anyone and, consequently, had no right to speak at the Conference on behalf of the Kampuchean nation.

67. The PRESIDENT said that the Conference was concerned with the legitimacy of representation by delegations and not with the nature of the régimes that governed countries. He would arrange with the Chairman of the Credentials Committee for the Committee to meet to resolve the matter as soon as possible.

*The meeting rose at 1.10 p.m.*

## 111th meeting

Wednesday, 25 April 1979, at noon

Chairman: Mr. H. S. AMERASINGHE.

### Adoption of a convention dealing with all matters relating to the law of the sea, pursuant to paragraph 3 of General Assembly resolution 3067 (XXVIII) of 16 November 1973, and of the final act of the Conference

1. Mr. STAVROPOULOS (Greece), Chairman of Negotiating Group 5, said that, following consultations with delegations during the early part of the session, it had appeared that no useful purpose would be served by holding further meetings of the Group; the Group had not therefore met during the present session.

2. In reporting to the plenary meeting on 19 May 1978, he had presented the compromise formula prepared by the Group (NG5/16).<sup>1</sup> Although reservations had been expressed, that formula had received widespread and substantial support

amounting to a conditional consensus, i.e. a consensus conditional upon an over-all package deal. On the same day, the President of the Conference had indicated that Negotiating Group 5 had successfully concluded its mandate but that other issues relating to articles 296 and 297 of the informal composite negotiating text<sup>2</sup> still had to be considered.

3. One such issue was mentioned briefly in the second footnote of document NG5/16, relating to article 296, paragraph 2 (a), which dealt with the settlement of disputes concerning, first, the right of coastal States to regulate, authorize and conduct marine scientific research, it being required that such activities should be conducted with the consent of the coastal State (article 247, paras. 1 and 2), and, secondly, the right of a coastal State to require the cessation of research activities in progress (article 254). The same topics were covered in article

<sup>1</sup> *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4), p. 120.

<sup>2</sup> *Ibid.*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

265. However, article 296, paragraph 1, included preliminary procedural safeguards applicable to all cases where the sovereign rights of coastal States were concerned, but no such safeguards were included in article 265, which related to the settlement of disputes with regard to marine scientific research. In addition, it seemed desirable that all dispute settlements should be co-ordinated and incorporated in one part of the text. Accordingly, in order to avoid repetition or conflicting provisions, the two articles would have to be considered and a single provision maintained. At the previous session, he had drawn attention to that point and to the need to have it considered by the appropriate Committee or, in any event, by the informal plenary meeting on settlement of disputes.

4. The other issue which had been raised in the Group but remained outstanding was the question of article 297, paragraph 1 (b), concerning military and law enforcement activities. The new formulation of article 296 and article 296 *bis* suggested in document NG5/16 might make it necessary to co-ordinate article 297, paragraph 1 (b), with the new compromise formulae. In any case, the very content of article 297, paragraph 1 (b), had been the subject of conflicting views expressed both in the plenary meeting and in the Negotiating Group; but interested delegations had later proved reluctant to raise the matter. It seemed therefore that the present formulation in the negotiating text might simply need to be co-ordinated by the plenary with the new articles 296 and 296 *bis*.

5. It should be noted that the texts suggested in his compromise formula for articles 296 and 296 *bis* dealt solely with the exercise of sovereign rights of coastal States in the exclusive economic zone and the settlement of disputes relating thereto. The Negotiating Group had also discussed a general provision on the abuse of rights which had implications that went beyond the Group's mandate. The Group had therefore recommended that such a provision should first be referred to the informal plenary meeting on settlement of disputes before any action could be taken on it.

6. In his opinion, the conclusion that there was widespread and substantial support for the formulations contained in document NG5/16, and the plenary meeting's view that the Group had successfully concluded its mandate, should be reflected in the further work of the Conference and in any revision of the negotiating text.

7. The PRESIDENT thanked the Chairman of Negotiating Group 5 for his report and for the work he had done for the Conference.

8. Mr. ANDERSEN (Iceland) said that, on a number of occasions, his delegation had expressed its view that the sovereign rights of the coastal State in the exclusive economic zone should be fully respected and that no third party should be able to decide on any limitation of those rights, which should not be jeopardized in any way. Unfortunately, the conciliation procedures suggested in the compromise formula for article 296 could be used for the purpose of harassing the coastal State, thus leading to loss of time and undesirable expense. However, such harassment would not in any sense be a conciliatory gesture and would in some cases defeat its own purpose. Accordingly, the text in its present form should work reasonably well in practice and any difficulties that might arise could be dealt with by the coastal State, in the light of circumstances existing at the time, with a view to protecting fully the vital interests of the coastal State concerned.

9. Mr. NASINOVSKY (Union of Soviet Socialist Republics) said that the question of the competence of Negotiating Group 5 had not been considered at the present session, and the Group had not in fact done any work. The Soviet delegation, in its statements in the Group and in the plenary meeting at the previous session, had clearly indicated that it entirely disagreed with the so-called compromise formula suggested

by the Chairman of the Group in document NG5/16. A number of other delegations had also expressed doubts and objections concerning that formula, while delegations which had agreed to the formula had linked their agreement to the results of the work in Negotiating Group 4, since the issues dealt with by the two Groups were interrelated.

10. The work of Negotiating Group 5 was very closely connected with other matters which had not yet been settled. It was not possible to solve the problem of the settlement of disputes concerning the living resources of the exclusive economic zone in isolation from the question of exceptions to the general procedure for the settlement of disputes; nor was it possible to disregard other categories of disputes, in particular disputes concerning delimitation, which involved the sovereign and inalienable rights of States. The Chairman of the Group had pointed to the need to co-ordinate the texts of certain other articles and, since the discussion of a number of issues had not been completed, it was obvious that the Group's work must be continued at the next stage of the Conference with a view to arriving at a solution that was satisfactory to all delegations.

11. Mr. OXMAN (United States of America) congratulated the Chairman of Negotiating Group 5 on the work undertaken with regard to the settlement of disputes concerning the living resources of the exclusive economic zone, and on the formula suggested for articles 296 and 296 *bis*.

12. His delegation noted that another matter remained pending in connexion with article 296—namely, the question of marine scientific research. It therefore wished to propose that in article 296, paragraph 3 (a), the words "a right or" should be deleted and the words "to withhold consent" should be inserted after the word "discretion". The relevant part of the text would thus read: "in no case shall the exercise of discretion to withhold consent in accordance with article 247 . . . be called in question". Such an amendment would in effect amount to a drafting change, because article 296, paragraph 3 (a), had been drafted at a time when article 247 had dealt solely with the question of consent. Later, however, a new paragraph had been added to article 247 dealing with matters other than consent. A more precise wording of article 296, paragraph 3 (a), was therefore necessary in order to reflect its true intent.

13. In addition, paragraph 3 (a) should not include any reference to article 254. Hence, the words "or a decision taken in accordance with article 254" should be deleted, as should the words "and 254", which did not in any case appear in the Russian text. The exception to the dispute settlement procedure would then relate solely to the exercise of discretion to withhold consent.

14. The reason for the proposed change lay in the fact that article 254 permitted the coastal State to require the cessation of a project that was already in progress and had been started with the consent of the coastal State under the convention. Such a decision should be distinguished from the exercise of discretion to deny consent before a project began. In some cases the loss of scientific knowledge might be the same, but the economic costs and loss of valuable time for trained personnel and specialized equipment when a project in progress was halted were quite different. The coastal State's authority to require the cessation of a project that had already commenced with its consent under the terms of article 254 was onerous. For practical purposes, the exercise of that authority by the coastal State, whether or not it was lawful, might end a particular project. Therefore, it was both unnecessary and inappropriate to exclude such a decision from dispute settlement procedures.

*The meeting rose at 12.25 p.m.*