

# **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.113**

## **113<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)*

gested that further consultations on the matter were necessary. For the moment, he wished only to stress that, in his delegation's view, any compulsory and binding third-party settlement of a dispute concerning sea boundary delimitations must have the consent of all parties to the dispute. Otherwise such a form of settlement would not be acceptable to the Chinese delegation.

50. Mr. KWANG-JUNG SONG (Republic of Korea) said that his delegation had already explained why it believed that the text of article 297, paragraph 1 (a), should be retained, and

why it considered that disputes must be settled in accordance with compulsory procedures. His delegation was, however, prepared to study in depth the proposal made by the Chairman of Negotiating Group 7 in his report.

51. Mr. SALIBA (Malta) said that the opinion expressed by his delegation in the Second Committee on the question of dispute settlement remained unchanged.

*The meeting rose at 6.25 p.m.*

## 113th meeting

Thursday, 26 April 1979, at 11.25 a.m.

Chairman: Mr. H.S. AMERASINGHE.

### Organization of work

1. The PRESIDENT said that at its 90th meeting the Conference had taken certain decisions on the organization of its work which were recorded in document A/CONF.62/62.<sup>1</sup> Among other matters, the Conference had taken decisions regarding the revision of the informal composite negotiating text<sup>2</sup> that were recorded in paragraphs 9 to 11 of document A/CONF.62/62, which read as follows:

"9. The plenary should aim at the completion of all substantive discussions for the production of a draft convention at the seventh session. The work programme adopted by the plenary should provide for the revision of the informal composite negotiating text and the discussion of the revised informal composite negotiating text.

"10. Any modifications or revisions to be made in the informal composite negotiating text should emerge from the negotiations themselves and should not be introduced on the initiative of any single person, whether it be the President or a chairman of a committee, unless presented to the plenary and found, from the widespread and substantial support prevailing in plenary, to offer a substantially improved prospect of a consensus.

"11. The revision of the informal composite negotiating text should be the collective responsibility of the President and the chairmen of the main committees, acting together as a team headed by the President. The Chairman of the Drafting Committee and the Rapporteur-General should be associated with the team as the former should be fully aware of the considerations that determined any revision and the latter should, *ex-officio*, be kept informed of the manner in which the Conference has proceeded at all stages."

2. At its seventh session, the Conference had not been able to realize the objectives which it had set itself in paragraph 9 of document A/CONF.62/62. Accordingly, the results of the session had been embodied in reports by the chairmen of committees and negotiating groups. Moreover, it did not seem possible at the present stage to effect the kind of revision of the negotiating text envisaged in document A/CONF.62/62, where it was clearly contemplated that such a revision should be the final one, to be followed by formalization of the text so that delegations wishing to do so would be free to propose formal amendments.

<sup>1</sup> See *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).

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

3. Yet another session had been devoted to negotiations and a modified negotiating procedure had been adopted at the present session in order to ensure greater concentration in an atmosphere that could be more conducive to progress, without depriving delegations which did not participate in that new forum of negotiations of the right to examine and review the results. It was for that reason that those results were to be treated as *ad referendum*.

4. The principle had been stated more than once—and in his opinion it appeared to be universally accepted—that no delegation's position on a particular issue should be treated as irrevocable until at least all the elements of the "package" as contemplated had formed the subject of agreement. Therefore, every delegation had the right to reserve its position on a particular issue until it had received satisfaction on other issues which it considered to be of vital importance to it. That was the only reasonable interpretation that could be given to the idea of a package deal. If the negotiations held so far produced results which would permit a substantial revision of the negotiating text, a revised text could be produced, but it need not be a final version within the meaning of document A/CONF.62/62—it could in effect be a draft preparatory to such a final revision. In that connexion, he suggested that, if the Conference agreed to produce a new document, such a document should preferably be issued under the symbol ICNT/Rev.1 rather than described as a revised informal composite negotiating text.

5. The chairmen of the committees would now proceed to present their reports on the progress made at the present session. It would then be for the plenary to decide how best the results of the negotiations were to be recorded, whether in the form of a revised text or in some other suitable manner. He recommended that the statements made by the chairmen in presenting their reports should be reproduced *in extenso* in the summary record. The actual reports would, of course, form part of the official records of the Conference.

**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 (continued)**

### REPORT OF THE CHAIRMAN OF THE THIRD COMMITTEE

6. Mr. YANKOV (Bulgaria), Chairman of the Third Committee, said that the report of the Third Committee had been considered at the Committee's 40th meeting.

7. Since the session of the Conference held at Caracas, the Committee had opted to negotiate fairly in open-ended meet-

ings, with the flexible use of all available means of negotiation, but always on the condition that the results should be brought to the attention of the Committee as a whole. The negotiations and discussions during the present session had concentrated on the main pending issues in all parts of the negotiating text within the mandate of the Third Committee, namely parts XII, XIII and XIV.

8. At the Committee's first meeting at the current session, he had reviewed the outstanding issues and enumerated all the pending informal proposals. Although most of the proposals had been the subject of extensive consideration at earlier sessions, it had been agreed to provide the sponsors with an additional opportunity to present them to the Committee and hear the reactions of interested delegations. The purpose had been to allow the Committee to assess the chances of acceptability and enable the sponsors to consider how to pursue matters of special interest to them in the future. It had also been agreed to provide adequate opportunity to discuss those informal proposals which, owing to lack of time, had not been examined thoroughly at previous sessions.

9. At the current session of the Conference, the Third Committee had held 10 meetings and heard over 220 statements. Because priority had been accorded at the previous session to discussions and negotiations on matters pertaining to the protection and preservation of the marine environment, an effort had been made at the present session to give some priority also to the pending issues in connexion with part XIII (Marine scientific research).

10. A number of meetings had been scheduled to discuss marine scientific research and enable the sponsors to present their informal proposals and the members of the Committee to comment on those proposals. He had taken the view that further consideration of the proposals would help to ascertain the possibilities for broadening the area of agreement.

11. In the light of the feeling within the Committee that the discussions on part XII should be concluded, it had been agreed that he should chair meetings on some of the pending amendments on the protection and preservation of the marine environment which had been considered during the previous informal negotiations under the chairmanship of Mr. Vallarta of Mexico, as well as all the meetings on marine scientific research. He had chaired some of the meetings on part XII, while other meetings had been chaired by Mr. Vallarta, as agreed at the meeting held on the organization of work. The basic aim of those negotiations and the procedure followed had been to broaden the area of compromise and to try to retain and improve those texts and amendments which, after prolonged and exhaustive negotiations, had proved to offer a substantially improved prospect of consensus, thus lessening the need to revert repeatedly to the same proposals. It should be noted that his present report to the plenary meeting followed the general lines of the pattern of reporting at previous sessions. However, in view of the terms of paragraph 10 of document A/CONF.62/62, paragraph 7 of document A/CONF.62/69<sup>3</sup> and recommendations 6 and 7 in document A/CONF.62/BUR.11, an effort had to be made at the present stage to incorporate, in the document reflecting the results of the session, those provisions which had emerged from intensive negotiations and which offered a substantially improved prospect of consensus as compared with the negotiating text.

12. Under his chairmanship, the Committee had discussed the Brazilian proposal<sup>4</sup> on article 209, paragraphs 1 and 5, the informal proposals submitted by the Bahamas, Barbados, Canada, Iceland, Kenya, New Zealand, the Philippines, Portugal, Somalia, Spain and Trinidad and Tobago<sup>5</sup> on article

212, paragraph 3, the informal proposal submitted by Spain<sup>6</sup> concerning article 234, the informal proposal submitted by the United Republic of Tanzania<sup>7</sup> in connexion with article 212, paragraph 5, and article 229, and also a general proposal to replace the expression "competent international organization" by "competent international organizations" wherever it appeared in the text. The Committee had also considered the French proposal concerning article 231, paragraph 1 (MP/29). In his opinion, the negotiations had been exhaustive and, under the existing guidelines contained in document A/CONF.62/62, those proposals could not be regarded as commanding widespread and substantial support offering an improved prospect of consensus.

13. Under the chairmanship of Mr. Vallarta, the Committee had held four informal meetings in an effort to amalgamate the provisions contained in article 236 with those proposed by several of the Arab delegations and Portugal (MP/18/Rev.1). He was pleased to report that the negotiations had been successful and, thanks to the able and flexible chairmanship of Mr. Vallarta and the sense of co-operation and moderation demonstrated by the sponsors of the amendment to article 236, a revision had been agreed upon. In that connexion, he wished to pay tribute to Mr. Vallarta for his valuable contribution to the work of the Committee. The new text of article 236 would read:

*"Article 236. Responsibility and liability*

"1. States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.

"2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.

"3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall co-operate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation such as compulsory insurance or compensation funds."

14. The only remaining proposal relating to that part was the proposal submitted by the Soviet Union<sup>8</sup> for a new "Part XIV bis. General safeguards." From his personal contacts with the various interested delegations and from the discussions on the proposals held during the previous session, he had gained the impression that the Committee preferred not to discuss that matter within the Committee itself, because of the close link between the Soviet proposal and matters pertaining to the Second Committee. In those circumstances, the Committee had entrusted him with the task of discussing the subject with the Chairman of the Second Committee in order to reach joint agreement on the best procedure to be suggested for dealing with the Soviet proposal.

15. In view of the progress of the negotiations and the very important positive results achieved, he ventured to state that the substantive negotiations on part XII (Protection and preservation of the marine environment) could be considered as completed. In that regard, he wished to reiterate the assessment contained in his report of 13 September 1978 (C.3/Rep.1)<sup>9</sup> that, with respect to matters relating to the protection

<sup>3</sup> *Ibid.*, vol. X, p.11.

<sup>4</sup> *Ibid.*, p.182.

<sup>5</sup> *Ibid.*, p.183.

<sup>6</sup> *Ibid.*, p.185.

<sup>7</sup> *Ibid.*, p.184.

<sup>8</sup> *Ibid.*, p.186.

<sup>9</sup> *Ibid.*, p.173.

and preservation of the marine environment, a stage had been reached in which the negotiating text constituted a good basis for consensus. That did not mean that there was no room for further negotiations aimed at improving the texts but, at the same time, account should be taken of the fact that the Committee had reached a balance which should not be disturbed.

16. Substantial time during the negotiations had been devoted to marine scientific research. As all delegations were aware, some differences of opinion still remained as to the régime for marine scientific research. The Committee had considered the revised version of the proposals presented by the United States of America (MSR/2/Rev.1), and two new proposals had also been submitted in the course of the discussions: by the USSR on article 256 (MSR/3) and by France on article 248 (MSR/4).

17. The discussions had been exhaustive, although several delegations had taken the view that they could not be considered conclusive. He had felt that there was substantial support for the negotiating text and for the maintenance of the delicate balance achieved so far in the over-all package with regard to part XIII. However, it was well known that several delegations had maintained that they should have the opportunity to continue the negotiations on that vitally important issue because the efforts to reach a compromise on some of the questions outstanding had not been exhaustive.

18. More than 50 statements had been made on the United States proposals, some of them opposing any change in the negotiating text and others advocating the need for certain drafting, stylistic or substantive modifications that would improve the text. It was his opinion, without prejudice to the interpretation given by the sponsors, that some of the United States proposals, especially those referring to the conduct of marine scientific research on the continental shelf, were of a substantive nature, whereas others entailed drafting changes, further clarification of existing provisions or interpretation thereof. Consequently, it was his personal view that, at a later stage and in the light of negotiations in the other committees, an attempt might be made at an appropriate time to broaden the basis for agreement on those other pending issues. He ventured to conclude that, since the requisite elements were not available to proceed to a revision of part XIII of the negotiating text, it was very important not to preclude the option of another attempt to improve the prospect for consensus.

19. A proposal had been submitted by a number of Arab States and Portugal<sup>10</sup> in connexion with article 264. In view of the results reached on article 236, no modification of article 264 was needed, since paragraph 3 of that article contained an explicit reference to article 236. The sponsors of the proposal had agreed with his assumption and had therefore withdrawn their proposal.

20. As to the negotiations on part XIV (Development and transfer of marine technology), it would be remembered that, at a previous session, Pakistan had submitted an informal proposal<sup>11</sup> for inclusion in the negotiating text of a new article 275 *bis*. Part XIV had been discussed exhaustively at the current session and it was his impression that the proposal by Pakistan commanded overwhelming support. Some suggestions for changes had been considered favourably by the Committee, and he therefore suggested the inclusion in part XIV of the following article as amended:

“SECTION 3. NATIONAL AND REGIONAL MARINE SCIENTIFIC AND TECHNOLOGICAL CENTRES

“Article 275 *bis*. Establishment of national centres

“States, through competent international organizations and the Authority shall, individually or jointly, promote the establishment, especially in developing coastal States, of

national marine scientific and technological research centres and strengthening of the existing national centres, in order to stimulate and advance the conduct of marine scientific research by developing coastal States and for strengthening their national capabilities to utilize and preserve their marine resources for their economic benefit.

“States, through competent international organizations and the Authority shall give adequate support to facilitate the establishment and strengthening of such national centres for the provision of advanced training facilities and necessary equipment, skills and know-how as well as to provide technical experts to such States which may need and request such assistance.”

21. At the seventh session, the United States had submitted a set of informal suggestions containing revisions of articles 274 and 276. The articles in question had not appeared in the revised version of the amendments (MSR/2/Rev.1) and he had gained the impression that the United States would not press those proposals. In that case, the negotiations on part XIV could also be considered as completed.

22. He wished to reiterate his understanding that, in respect of the provisions of the negotiating text that came within the terms of reference of the Third Committee, further progress had been made to broaden the areas of agreement, and that the basis had been laid for a reasonable compromise offering a substantially improved prospect of consensus.

23. His report and his conclusions had met with general approval by the Committee. He would go even further and say that the support expressed by the members of the Committee had been so significant and clear that the report could be considered not simply as information on the work of the Committee, but as an important summing up of the Committee's deliberations so far and as a collective assessment of the results of the negotiations to date. He would refrain from stating that the Committee had fulfilled its mandate, since proposals were pending in connexion with part XIII, but it should be assumed that the consideration of parts XII and XIV had been concluded. Accordingly, he suggested that all the provisions on which a consensus had been reached or had emerged as a result of intensive negotiations during the previous and the present sessions, and which offered a substantially improved prospect of consensus, should be incorporated in a revised version of the negotiating text as agreed by the Conference.

24. Lastly, he wished to express his most sincere thanks and appreciation to all members of the Committee for their co-operation and their good will, which had enabled the Committee to arrive at a successful conclusion of its work at the present session, and also to pay special tribute to the secretariat for its valuable assistance.

25. The PRESIDENT said that the sole purpose of the current meeting was to decide whether the various proposals submitted by the Chairman of the Third Committee commanded such widespread and substantial support as to offer a substantially improved prospect of a consensus. In the circumstances, there should be no need for any speaker to address himself to matters of substance.

26. Mr. ATAÍDE (Portugal) said that the work of the Third Committee had produced some highly valuable results.

27. The amendment to article 236 of the negotiating text, following discussion of a proposal submitted by some Arab countries and his own delegation, was noteworthy not only in that it constituted progress in the work of the Conference but also in that it laid significant foundations for the development of international law.

28. The PRESIDENT said that he had asked speakers to refrain from discussing matters of substance.

29. Mr. ATAÍDE (Portugal) said that the matter in question was one of peculiar importance in that it would affect conventions that were awaiting agreement elsewhere.

<sup>10</sup> *Ibid.*, p.188.

<sup>11</sup> *Ibid.*, p.195.

30. His delegation was very pleased with the work of the Third Committee and was happy to endorse the conclusions in its Chairman's report.

31. Mr. KOZYREV (Union of Soviet Socialist Republics) said that his delegation noted with particular satisfaction the positive results achieved by the Third Committee which at the eighth session of the Conference had come to a new and important stage in its work and had virtually concluded substantive negotiations on the issues in parts XII and XIV of the negotiating text.

32. His delegation wished to stress that it agreed with the conclusions expressed in the report by the Chairman of the Committee, and particularly with the conclusion that substantive negotiations on the issues of pollution control and transfer of technology could be considered as completed.

33. It also attached great importance to the conclusion that proposals by certain countries which threatened to upset the balance which the Committee had achieved on vessel source pollution issues did not command "widespread and substantial support" and could not be considered as offering "an improved prospect of a consensus". That circumstance was particularly significant since the provisions of part XII reflected a compromise which presented very great difficulties for his delegation, a compromise which it could agree to only as a final "package" solution of all vessel source pollution issues.

34. Unfortunately, the Chairman of the Committee had been unable to conclude that negotiations on issues in part XIII had been completed as well. The Soviet delegation agreed that those and other issues might be the subject of further negotiations in the future.

35. Mr. BEESLEY (Canada) said that, if the report was not the final one, it was fairly close to it. The Third Committee had registered a signal achievement of historic importance. At the beginning of the Conference, there had been no international law on the marine environment but, as a result of the Committee's work, the principle of the preservation of the marine environment had been accepted and a number of practical draft provisions prepared.

36. It would be wrong to say that his delegation was entirely satisfied with the outcome. It had wanted more specific provisions and some additional provisions. Nevertheless, it accepted the Chairman's judgement that the text he had put forward commanded widespread and substantial support, while other suggested texts did not.

37. Mr. MHLANGA (Zambia) said that, even though his delegation had been unable to participate fully in the work of the Third Committee, it was most gratified at the progress that had been made.

38. However, certain aspects of the work of the Third Committee were connected with the negotiations in the Second Committee. His delegation had made some proposals to the effect that any extension of zones beyond the territorial seas of coastal States should preferably be regional in character. That proposal was before the Second Committee. If it was adopted, it would be necessary to modify some of the Third Committee articles accordingly.

39. Mr. DE LACHARRIÈRE (France) said that the Conference had been called upon to tackle a considerable range of problems to which different States attached different importance. His Government considered marine pollution to be one of the key issues relating to the oceans and thus regarded the work of the Third Committee as being of particular importance. Consequently, his delegation was very happy to note that the work of marine pollution could be regarded as concluded. The Committee had succeeded in drafting a compromise acceptable to all. Not all its provisions were ideal, but on the whole the compromise was a very positive one.

40. It was now necessary to publicize the results of that compromise as a basis for future international law. Once the convention was adopted and became law, the discipline prescribed in its provisions on pollution would, of course, be imposed. At very best, however, adoption of the convention would take several years and in the meantime numerous polluting disasters could occur. He suggested, therefore, that the results of the compromise should be included in ICNT/Rev.I and used as a reference document by Governments. In that way, the convening of the Conference would be justified in the eyes of the general public or, at any rate, in the eyes of the French public.

41. Mr. KE ZAISHUO (China) said that, at the current session, the Third Committee had made some very evident progress with its work. The improvements to the negotiating text made on the basis of the proposals by some Arab States and Portugal and by Pakistan were very significant.

42. His delegation agreed that the work on parts XII and XIV could be regarded as completed.

43. In the case of part XIII, there were still important points which required further negotiation. Although the discussions had shown that the existing text commanded widespread support, there was still room for detailed improvement. In negotiating such improvements, however, it should be remembered that substantial changes could endanger the delicate balance already achieved in the negotiating text.

44. Mr. VUNDU-DIA-MASSAMBA (Zaire) observed that the Chairman's report stated that negotiations on parts XII and XIV could be regarded as concluded. He wondered whether that meant that, in its future work, the Third Committee would refrain from reconsidering those parts, which would simply be included in the negotiating text as they stood.

45. The PRESIDENT said that the purpose of the revision of the negotiating text was to record the progress made. As he had stated on several occasions, no delegation's position would be regarded as irrevocable until the very last moment of formal decision.

46. Mr. STAVROPOULOS (Greece) said that his delegation did not necessarily endorse every single point in the compromise text, but regarded it in general as an excellent piece of work.

*The meeting rose at 12.35 p.m.*