

# **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/C.3/SR.43**

## **43<sup>rd</sup> meeting of the Third Committee**

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

circumscribe the coastal State's right to invoke the provision even in a *prima facie* case where it must require cessation of the activities as quickly as possible.

84. As to article 255, his delegation supported the amendment put forward by the Peruvian representative, for the reasons he had given.

85. In the case of the new paragraph 2 of article 264, his

delegation was concerned with the type of dispute to be submitted to compulsory conciliation as well as with supporting the coastal State's discretion, which should not be called in question by the Conciliation Commission. However, for lack of time, his delegation was not in a position to make specific comments at the current stage.

*The meeting rose at 10.10 p.m.*

## 43rd meeting

Thursday, 23 August 1979, at 11.05 a.m.

Chairman: Mr. A. YANKOV (Bulgaria)

### Report by the Chairman (*concluded*)

1. Mr. SUZUKI (Japan) said that his delegation found the compromise formulae contained in the report (A/CONF.62/C.3/L.33) generally acceptable and was in a position to support most of the views expressed therein. In particular, it had no difficulty in supporting the proposed amendments to articles 242, 246 *bis*, 247, 249 and 253. It could also support the proposed amendment to article 255, with the changes proposed by the Peruvian delegation (41st meeting). With regard to article 264, although his delegation in principle favoured a compulsory dispute settlement procedure, it was ready as a compromise to give serious consideration to the proposal in the report.

2. Mr. BRAUNE (German Democratic Republic) said that he welcomed the compromise formulae contained in the report under consideration. Regarding the question of marine scientific research on the continental shelf beyond the 200-nautical-mile limit, the German Democratic Republic, a geographically disadvantaged country, had no way of claiming such an extended continental shelf. Like the other socialist countries, it had actively supported the demand by the developing coastal States that marine scientific research within the exclusive economic zone of 200 nautical miles should be subject to the consent of the coastal State involved. In any case, his delegation had spoken, in the Second Committee, in favour of an outer limit of the continental shelf which would coincide with that of the economic zone. The effect of the current provisions of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1) would be to prevent free marine scientific research in a vast area beyond the 200-nautical-mile limit. For that reason, the German Democratic Republic favoured a more liberal régime of marine scientific research in that part of the continental shelf located beyond the 200-nautical-mile limit than in the exclusive economic zone. Although the proposed amendment to article 246 *bis* did not correspond to its wishes, his delegation was none the less prepared to accept it in a spirit of compromise.

3. Concerning article 255, his delegation, which had outlined at the Committee's last but one informal meeting the reasons why it was unable to support the current wording of the text of the revised negotiating text, considered acceptable the proposed compromise wording, as amended at the 41st meeting by Spain and Peru.

4. The German Democratic Republic thus supported the formulae contained in the report, which should, however, be considered within the over-all framework of the negotiations aimed at elaborating the convention envisaged.

5. Mr. CHANOCH (Israel) said that his delegation's final position on article 246 would depend on the provisions of part XV of the revised negotiating text and, more particu-

larly, of article 296 regarding the settlement of disputes arising from marine scientific research.

6. With regard to the new article 246 *bis*, his delegation wished to reserve its position on subparagraph (a). It was not satisfied that such a provision was needed nor, to the extent that it stated a presumption, that the presumption was correctly formulated.

7. With regard to article 252, his delegation also wished to reserve its position on the four-month period specified therein. The possibility of allowing for a slightly longer period should be considered.

8. Regarding article 260, his delegation, while accepting the principle involved, believed that the Drafting Committee should carefully scrutinize its formulation. The current wording contained ambiguities which might open the door to abuses by States deploying or using scientific research installations, whether mobile or stationary.

9. In the light of resolution 16 (Cg-VIII), adopted by the World Meteorological Organization at its eighth congress, his delegation believed that the scientific research referred to in part XIII should also embrace meteorological research over the sea. That aspect should therefore be considered at the following session, preferably with the assistance of the World Meteorological Organization.

10. As for the new paragraph 2 of article 264, it seemed partly to overlap—and to contradict—the current wording of that article. Furthermore, it would be necessary to bring the new paragraph 2 into line with article 296 and probably also article 297. Paragraph 2 of article 296, which negotiating group 5 had properly left untouched the preceding year, also dealt with scientific research and was clearly intended to be an exception to the general principle of compulsory settlement of disputes set forth in article 286. Those were two major issues which would have to be clarified before the final adoption of the text of the convention.

11. Another fundamental question was whether it was really necessary to include in part XIII a specific provision on the settlement of disputes. In whatever form, article 264 seemed to limit the general dispute settlement obligation arising from the application of article 286. It would thus seem logical to include it in articles 296 to 298, where the limits of applicability of the provisions on the subject were outlined. It remained for the Conference to consider, if necessary, the general question of the settlement of disputes once the committees had indicated their basic positions on it. Thus, the Third Committee would pronounce itself on the reservations to the general applicability of the procedures for settling disputes on questions within its competence, in that instance the questions covered by part XIII. His delegation accordingly wished to suggest that the Chairman of the Third Committee bring the matter to the attention of the Confer-

ence, which should give it special attention at the following session.

12. Apart from the points just mentioned, his delegation was pleased with the results of the current session.

13. The CHAIRMAN said it was obvious that any amendment of article 264 would necessarily affect article 296. He had already suggested at an informal meeting at Geneva that all the provisions concerning the settlement of disputes should be transferred from part XIII to part XV. No consensus on that had emerged, but the question remained open, and the possibility of regrouping all the provisions on the settlement of disputes in a single part covering the convention as a whole should be considered in the final stages of preparing the convention.

14. Mr. BLUMBERG (United States of America), referring to the views expressed by the Swedish delegation, recognized that pollution of the oceans was increasing as a result of man's activities. Although it did not support the reopening of negotiations on the subject, his delegation did not think that the conclusion of the negotiations on part XII was an adequate solution to the problem. Further negotiations in other international forums would be needed to broaden existing measures to deal with marine pollution and to establish new measures in areas where international standards were inadequate. For example, article 208 called for the establishment of international standards to prevent, reduce and control pollution from activities on the continental shelf, and he did not believe that such international efforts needed to await conclusion of a law of the sea convention. Widespread ratification of existing global and regional treaties would represent an additional step towards preventing pollution of the sea.

15. With reference to a point raised by the Swedish delegation, he said he believed that international law clearly allowed States to require vessels entering their ports to meet certain environmental standards. That view was confirmed by part XIII of the revised negotiating text.

16. Mr. BELDESCU (Romania) said he thought that the Chairman's report contained positive elements which improved the revised negotiating text, and his delegation had no difficulty in accepting the proposed formulations for articles 242, 247 and 255.

17. It had some reservations, however, concerning other proposed provisions. With regard to article 246 *bis*, subparagraph (a), for instance, it was difficult to imagine that a coastal State could allow another State with which it did not maintain diplomatic relations to carry out research in areas under its jurisdiction. As for article 253, the Romanian delegation would like a more specific indication of the duration of the "reasonable period of time". In addition, the proposed formulations for articles 246 *bis*, subparagraphs (b) and (c), 249, paragraph 2, and 264 had repercussions on other articles and even on other parts of the convention. His delegation would study those articles very closely and reserved the right to make a later statement on them.

18. As it had already stated at Geneva, it believed that part XIII of the revised negotiating text contained provisions which ensured a reasonable balance between the recognized rights of coastal States within their exclusive economic zone and on their continental shelf on the one hand, and the interests of the continued development of marine scientific research on the other. His delegation welcomed the prospect, however, of new consultations and negotiations on those questions, with a view to making the provisions of that part more acceptable.

19. Mr. TREVES (Italy) said he regretted that the Committee did not have enough time to discuss the important proposals contained in the Chairman's report or to prepare a second revision of the negotiating text. His delegation had

had serious reservations about the revised text, particularly with regard to the inadequate provisions for the settlement of disputes, but, in its opinion, the proposals in the report could on the whole be considered improvements.

20. The question of marine scientific research raised two key issues. First, with regard to the continental shelf — in which connexion Italy had only recently accepted the provisions of article 76 — his delegation believed that the wording of article 246 *bis*, which took into account recent negotiations on the subject, seemed very promising, as a compromise. Secondly, with regard to the settlement of disputes, his delegation attached considerable importance to the mandatory conciliation procedure and would, therefore, have preferred stronger wording. However, in its view, the proposal submitted in the report reflected progress, and he expressed the hope that the Committee would continue to work in that direction.

21. Miss GERBER (Switzerland) said that, in general, her delegation thought that the proposals contained in the Chairman's report considerably improved the existing text of part XIII of the revised negotiating text. That was true, in particular, of the proposals concerning articles 246 *bis* and 249. Her delegation also favoured the system as the basis of the revised article 253, whereby the cessation of research activities must, in principle, be preceded by their having been merely suspended.

22. With regard to the new paragraph 2 of article 264, her delegation still believed that disputes concerning marine scientific research, like most other disputes relating to the interpretation or application of the convention, should be covered by the system of mandatory jurisdictional settlement described in part XV. Although, admittedly, mandatory conciliation was well-suited to the settlement of disputes based on the concept of distributive justice — as in the case, for example, of disputes concerning fishing in the exclusive economic zone — disputes concerning marine scientific research involved the interpretation or application of provisions of a decidedly normative nature and, as such, were difficult to settle by conciliation procedures. Accordingly, her delegation, like that of the Netherlands, found it very difficult to accept the new paragraph 2 of article 264. As for the placing of article 264, her delegation still thought that section 6 of part XIII should be included in part XV, which concerned the settlement of disputes.

23. Mr. LI GYE RYONG (Democratic People's Republic of Korea) said that after a preliminary examination of the Chairman's report his delegation endorsed the proposals concerning articles 242 and 247. However, with regard to marine scientific research, it preferred the original wording of the revised negotiating text. Moreover, the proposed articles 246 *bis* and 253 would restrict the rights of coastal States in matters of marine scientific research and would change the substance of the respective articles of the revised negotiating text, on which a consensus had already been achieved. For that reason, his delegation could not accept those articles. It reserved the right to comment on articles 249, 255 and 264 at a later date.

24. Mr. JACOBSEN (Denmark) reminded the Committee that his delegation had stated on many occasions that, in its opinion, the revised negotiating text was a balanced text which could, however, be improved. To a large extent, the efforts of the Chairman served that purpose, although his delegation could not approve unreservedly all his proposals. However, it welcomed the introduction in article 246 *bis*, subparagraphs (b) and (c), of an idea in which it had already shown interest. The new wording of article 253 also reflected important progress. Both those articles, as amended, helped to reconcile the interests of coastal States with those of researching States.

25. Mr. MACKAY (New Zealand) considered that the endorsement received by the Chairman's proposals was encouraging. His delegation supported any proposals that would clarify and improve part XIII of the revised negotiating text, which it already considered acceptable, and a number of the Chairman's proposals fell into that category.

26. However, with regard to the continental shelf beyond the 200-mile limit, some of the proposals entailed substantive changes and, in so far as the existing rights of coastal States would be affected, those proposals could be accepted only in the context of a final package, if at all.

27. Mr. GODANA (Kenya) said that, all in all, the Chairman's report reflected the work of the Committee quite accurately. However, it left something to be desired: for example, he could not recall there having been any semblance of a consensus on article 246 *bis*. In view of the Chairman's explanations, his delegation could accept subparagraph (a); however, it had reservations with regard to subparagraph (b), and he suggested that additional limitations should be imposed on the freedom of the researching State. For example, without prejudice to the other provisions of the convention, that State should notify the coastal State of the intended research in advance, supply information about its research project, and transmit the results of its work to the coastal State.

28. Mr. ASTAPKOV (Byelorussian Soviet Socialist Republic) said that, despite the complexity of the issues discussed, the main ideas set forth in the Chairman's report had largely been accepted, especially those concerning measures to facilitate marine scientific research and to assist vessels conducting activities in that field, as well as the procedure for the cessation of such activities if certain conditions were not respected. Appreciable progress had been made towards solving the problem of marine scientific research on the continental shelf beyond the 200-mile economic zone. Several delegations had expressed their interest in the double régime for scientific research on the continental shelf. The Chairman's proposal offered a compromise that was acceptable to coastal States, land-locked States and geographically disadvantaged States alike.

29. His delegation believed that the proposals contained in the report could provide a basis for consensus and it was prepared to support them.

30. Mr. RUDKOWSKI (Poland) said that the Chairman's report reflected the Committee's work completely, accurately and objectively and was encouraging in that it showed that a consensus could be reached rapidly. His delegation had no difficulty in accepting the ideas contained in the report, although the wording of certain articles could be improved. It could, moreover, give its preliminary endorsement to certain proposals, in particular those concerning articles 242, 246 *bis*, subparagraph (a), 247, 249 and all the amendments to article 253. The proposed texts constituted an actual improvement over the existing articles. It would state its position on the other proposals at a later date.

31. Mr. VALLARTA (Mexico) said that, having presided over the informal consultations on the protection and preservation of the marine environment, he was in a good position to suggest that the debate on part XII of the negotiating text should be closed. The provisions contained in part XII were very complete and could even be applied to the industrial or navigational accidents that had occurred in recent years. In that respect, he was pleased to note that no proposal had been made to amend part XII; any amendments would be disastrous for the balance that had been established.

32. Because the convention was so general, it would be without force unless, in practice, technical rules were established to control pollution. Therefore, the Inter-

Governmental Maritime Consultative Organization, the United Nations Environment Programme and other specialized agencies must now round out the work begun by the Conference.

33. Mr. FIGUEIREDO BUSTANI (Brazil) challenged the brief statement the Chairman had made the previous day, in which he had presented a partial assessment of the Committee's discussions. He expressed the hope that the statements made during the current meeting would enable the Chairman to avoid taking arbitrary steps on that subject.

34. In his report, the Chairman requested support for the amendments proposed to the revised negotiating text. His delegation did not think that those proposals merited broad support. Very serious questions were involved, and many national interests were at stake; the Committee must therefore proceed with the utmost caution in order to avoid destroying what had been achieved thus far. In any case, it could not be said that the proposed amendments enjoyed substantial support; although one or two of them deserved support in principle, others required radical changes, and a third category had aroused strong objections from a large number of delegations. That fact must be taken into account. Some 30 delegations had stated that they preferred the revised negotiating text as it stood and had serious reservations about the proposals.

35. He suggested, therefore, that the text of the Chairman's report should be redrafted before being submitted to the Conference, since additional negotiations were necessary on a number of points. He would prefer it if the Chairman would submit those proposals in a personal capacity, and he did not think that they should be included in the Committee's report. In any case, they should all be carefully redrafted. Furthermore, in his report, the Chairman did not mention the substantial support expressed for the revised negotiating text.

36. More specifically, in paragraph 4 of his report (A/CONF.62/C.3/L.33), the Chairman referred to "the conduct of marine scientific research on the continental shelf beyond 200 miles from the baselines from which the breadth of the territorial sea is measured", as though that limit had already been accepted. Nothing of the sort had occurred, and therefore only a general reference should be made to the conduct of scientific research, without entering into details.

37. In paragraph 8 of his report, the Chairman stated that some compromise formulae had emerged. In his own opinion, that was not true; that sentence should therefore be changed, as should the wording of paragraph 9. He hoped that, on the basis of the discussion held during the current meeting, it would be possible to submit to the Conference a revised text that better reflected the positions in the Committee.

38. The Brazilian delegation had considerable difficulty in accepting the wording of articles 246 *bis* and 253 which, in its opinion, had not been adequately examined by the Committee. It had also been pointed out that articles 264 and 296 were related. There was, in fact, a logical relationship between those two articles but it might be useful to recall that the "package deal" reached on the revised negotiating text related to the articles concerning the settlement of disputes. The consensus would no longer be valid if the contents were changed. His delegation insisted that the question of the settlement of disputes regarding marine scientific research should be dealt with separately. It expressed reservations on the wording of article 264 which would be examined at the next session.

39. The CHAIRMAN assured the representative of Brazil that he had never acted arbitrarily in the exercise of his functions, that he had no intention of doing so and that the allegations made by the Brazilian delegation were totally unfounded. Ever since he had been chairing the Third Commit-

tee, he had gained a reputation for impartiality and objectivity and, in his opinion, his report was only a faithful reflection of the facts. It was up to the Conference itself to decide on the follow-up action to be taken in connexion with the report. Furthermore, there was no change in attitude towards the revised negotiating text and he drew the attention of the members of the Committee to paragraphs 14 and 15 of his previous report (A/CONF.62/L.34)<sup>1</sup> in which he had stated that the Committee had not yet attained all the required elements to enable it to amend the revised negotiating text and that the discussions could not be considered conclusive. The work of the Committee at the current session had been carried out, as had been stated at Geneva, with the aim of broadening the area of agreement on questions which were left pending.

40. He once again assured the representative of Brazil that he had duly taken note of his observations and that he would continue to act, as in the past, as positively and impartially as possible.

41. Mr. VÁLDEZ (Peru) began by pointing out that, in the new paragraph 2 of article 249, reference was made to the "exploration or exploitation" of natural resources. His delegation proposed that reference should be made to exploration and exploitation; he asked whether that proposal has been taken into account.

42. The Commission had been successful in settling some of the outstanding questions by improving the wording of certain articles on which a general consensus could thus more easily be reached and he quoted articles 242 and 247 as examples. On the other hand, other articles which were presented as having been accepted as a basis for consensus had not been sufficiently studied by the Committee and no consensus seemed to have been reached at the previous meeting. That being the case, and if no action were taken regarding the amendments proposed by several delegations, including his own, he proposed that those articles not be incorporated as a basis for consensus in the report. If they were, his delegation would not support the version submitted by the Chairman and would express its opposition at the plenary meeting.

43. The CHAIRMAN said that account had been taken of the amendment proposed by the Peruvian delegation to article 249, paragraph 2, and that the informal proposals made on most of the questions had appeared in documents MSR/2/Rev.1 and MSR/3 to 5. He referred the representative of Peru to paragraph 5 of his report and assured him that, even if the Committee did not have time to examine all the proposals, they would all receive the same treatment, without any form of discrimination. With regard to basic questions, it was up to the delegations themselves to decide on the procedure to be followed and to state their respective points of view in order to help find a compromise solution.

44. Mr. YTURRIAGA BARBERÁN (Spain) wished to stress categorically that no delegation had, at any time, questioned the undoubted objectivity, impartiality and fairness shown by the Chairman in his direction of the Committee's work. For its part, the Spanish delegation was firmly convinced of that. Opinions might, indeed, differ on certain points of detail but he did not doubt that the Chairman had described the situation as he saw it at the time when he was preparing his report. Nevertheless, after the debates that had taken place during the three preceding days, he thought that the conclusions of the report should be amended slightly. In fact, after those debates, it appeared difficult to uphold the view that the negotiations had produced some compromise formulae which seemed to enjoy sufficiently wide support to

offer a reasonable prospect of consensus. It seemed to be essential to tone down that statement to a certain extent since there was a risk that, at the plenary meeting, the same debates would be repeated and the same objections would be raised as had already been heard by the Committee.

45. He shared the view expressed by the representative of Brazil that it would be premature to regard the proposals contained in the Chairman's report as being the formulae offering the greatest prospect of consensus. For his part, he would have preferred other formulae. In a spirit of compromise, he therefore proposed certain amendments which would allow a better presentation of the situation as it appeared during the debates.

46. For example, in paragraph 8, he proposed that "a certain support" should be substituted for "a substantial degree of support"; the wording would thus be less categorical. The phrase "as to provide a reasonable prospect for consensus" should then be replaced by "which could serve as a basis for subsequent agreement for amending the informal composite negotiating text".

47. In paragraph 9, he proposed that the phrase "which could offer a substantially improved prospect for a consensus" should be replaced by the phrase "which could be finalized at the next session". Such a wording would be more realistic since, while taking note of the progress made, delegations realized that the work was not finished and hoped that it might be concluded at the next session.

48. Finally, he must disagree with the Mexican representative's argument that the slightest amendment to the current text of part XII would have catastrophic consequences. While it was true that, in general terms, part XII possessed definite qualities, certain articles, in particular article 133 and article 42, were obviously not perfectly worded and he hoped that by the end of the Conference an agreement would be reached on a completely satisfactory wording.

49. The CHAIRMAN pointed out that he had prepared his report before the debates of the preceding days and that he would take those debates into account when submitting a true and exact report at the plenary meeting. It was generally acknowledged that the basic negotiations on parts XII and XIV were concluded and even if one or more delegations did not agree with that assessment, a reopening of the debate in the Third Committee was not justified.

50. The negotiations had produced positive results which improved the prospects for consensus. Indeed, in striving to broaden the basis for a reasonable compromise in the field of marine scientific research, it was important not to lose sight of the fundamental principles of the law of the sea. The Third Committee had been able to avoid upsetting the delicate balance needed for the conduct of marine scientific research. The compromise formulae produced by the negotiations were the result of concessions made by delegations which held opposing views. It was only under those conditions that a compromise was valid. That in no way signified that the negotiating efforts were completed and that there was no room for further improvement in the text and, consequently, a better prospect for a consensus. The important proposals contained in the report needed further consideration and certain drafting improvements could facilitate agreement. However, there was insufficient time to examine them further. It might, however, be considered that certain proposals, especially those relating to articles 242, 247 and 255 (with the drafting amendment proposed by Peru), were generally acceptable. Others, relating to articles 246 *bis*, 249, 253 and 264, had been accepted in substance by a number of delegations with certain drafting amendments. Some delegations were opposed in principle to all or part of some of those proposals but no delegation had been opposed to their further consideration which, in itself, was encouraging.

<sup>1</sup>Official Records of the Third United Nations Conference on the Law of the Sea, vol. XI (United Nations publication, Sales No. E.80.V.6).

51. On the whole, the work accomplished during the session could therefore be regarded with satisfaction and optimism.

the secretariat, the Chairman declared that the Committee had completed its work for the session.

52. After having thanked the delegations and members of

*The meeting rose at 12.40 p.m.*

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