

Third United Nations Conference on the Law of the Sea

1973-1982

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118th Plenary meeting

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)*

13. The Conference would have to work with a deep sense of urgency. From all sides he had had indications that the patience of Governments was nearing exhaustion. If, therefore, negotiations on the hard-core issues — without excluding consideration of other issues — were to be concluded, every effort must be made to complete the work of the negotiating groups and the group of 21, or any similar groups that were established, by the end of the third week of the resumed session. The strain imposed on the Chairmen of the Committees and of the negotiating groups was heavy, and their responsibility was formidable. It was owing to their perseverance and diligence and the assistance they had received from delegations that it had been possible to achieve even the amount of success that could be put on record thus far.

14. In conclusion, he said that the most serious problem of all was that of giving shape, form and substance to the concept of the common heritage of mankind. The difficulties that existed arose, in his view, out of the sharp differences that were found between most of the industrialized countries and the developing countries regarding the interpretation of that concept. Under the so-called parallel system, a compromise had been devised between the two conflicting interpretations, but to give effect even to that compromise, it was necessary to carry out further negotiation on many problems, such as the financing of the Enterprise, the financial terms of contract which would offer inducement to investors while providing tangible financial return to the Authority, and the manner in which decisions were to be taken in the Council, which would be the Authority's executive organ.

15. The idea of a single entity exploiting the common heritage of mankind—a vast natural resource which none could claim or appropriate — on behalf of mankind, and for the benefit particularly of its less privileged sector, was a bold concept. The success of such an unprecedented endeavour would transform the spirit and pattern of international relations from one of ceaseless divergence and conflict to one of enduring fraternity and co-operation.

16. Mr. UPADHYAY (Nepal) recalled that at the seventh session his delegation had introduced a proposal on a common heritage fund (A/CONF.62/65)² which the President, in

²*Ibid.*, vol. IX (United Nations publication, Sales No. E.80.V.6.).

his explanatory memorandum contained in document A/CONF.62/WP.10/Rev.1, had cited as requiring further negotiation during the resumed eighth session.

17. While the proposal had not been formally discussed at the Conference, it had been the subject of a great deal of informal discussion. Furthermore, a working group consisting of India, Nepal, Pakistan, Oman, Singapore and Sri Lanka had been established by the group of Asian States to examine the implications of the proposal. That group, he understood, would be meeting very soon. However, he suggested that in order to provide an appropriate forum of the Conference in which the proposal could be considered, the Conference should decide to establish a working group to consider the proposal and other outstanding issues.

18. The PRESIDENT welcomed the fact that a working group had been established within the group of Asian States to consider the proposal on a common heritage fund. As to the suggestion to set up a separate working group within the Conference, he wished to hold consultations on the matter, since it was necessary to avoid a proliferation of working groups.

19. Mr. ENGO (United Republic of Cameroon), speaking as Chairman of the First Committee, said he felt that the tentative schedule of meetings attached to the President's letter of 29 July 1979 should not be considered too rigidly with regard to the work of the First Committee. While the working group of 21 was expected to conclude its work within the first three weeks of the resumed session, the first week had almost ended, leaving it only two weeks to complete its work.

20. Furthermore, he urged that, as far as possible, matters should not be referred to bodies other than the working group of 21; to do so would merely delay the work. He therefore suggested that it would be far more productive if the working group of 21 were allowed to continue using the informal methods it had devised, in order to facilitate progress in its work.

21. The PRESIDENT said that nothing in his proposal was inconsistent with allowing the working group of 21 the latitude to decide on the way in which it wished to proceed with its negotiations.

22. He suggested that the meeting should adjourn to enable the working group of 21 to proceed with its work.

The meeting rose at 10.50 a.m.

118th meeting

Thursday, 23 August 1979, at 4.35 p.m.

President: Mr. H. S. AMERASINGHE

Organization of work for the ninth session

1. The PRESIDENT drew attention to the General Committee's recommendations on the organization of work for the ninth session in document A/CONF.62/BUR/12, as amended by document A/CONF.62/BUR/12/Add.1, together with oral amendments. He observed that the question of the programme of work for the rest of the eighth session — the first item in document A/CONF.62/BUR/12 — had been overtaken by events and that the addendum applied only to the organization of work for the ninth session.

2. With regard to the eighth amendment, the representative of Brazil had suggested at the 49th meeting of the General Committee that delegations should be asked to address themselves in the general discussion during the fourth week to the substance of the existing informal composite negotiat-

ing text and to avoid making comments on questions of a general nature.

3. The new text to be added on page 5 of the English text should appear under the heading "Final stage" and not "Fourth and final stages", as in document A/CONF.62/12/Add.1. The period of ten days referred to in the third sentence included the eight days mentioned in the first sentence, plus a two-day grace-period for the submission of formal amendments. Lastly, in the final subparagraph, the words "the rules of procedure and" should be added after the words "having due regard to".

4. Mr. KRISHNADASAN (Swaziland) said that if the new text to be inserted on page 5 was to be headed "Final stage", the reference in the final subparagraph to "the subsequent stages" should be amended.

5. The PRESIDENT said that the necessary consequential amendments would be made. If there was no objection, he would take it that the Conference wished to adopt the report of the General Committee, as amended (A/CONF.62/88).

It was so decided.

Statement on behalf of the group of coastal States

6. Miss CABRERA (Mexico), speaking on behalf of the group of coastal States, said that the group had noted with surprise and concern the recent media reports that the United States Government had ordered its Navy and Air Force to undertake a policy of deliberately sending ships and aircraft into or over the disputed waters of nations that claimed a territorial limit of more than three miles.

7. That policy, which, in its essentials, had been confirmed by officials of the United States Government, was contrary to customary international law, in accordance with which the great majority of States exercised full sovereignty in their territorial seas up to a limit of 12 nautical miles, subject to the right of innocent passage. It was also at variance with the understanding prevailing at the Conference on the Law of the Sea, which recognized the validity of such a practice.

8. The group had taken note of the clarification subsequently provided by United States authorities to the effect that there had been no order to challenge in an aggressive manner the claims of other nations. However, it considered the assertion by the United States that the régime of the high seas commenced beyond the three-mile limit to be an anachronism.

9. The group of coastal States had also taken note of the reassurances given by the same official source that the United States position at the Conference on the Law of the Sea had not changed and of the elements which, according to that source, should be combined within the context of an over-all package deal. The group reaffirmed its determination to continue working towards the early adoption of a generally acceptable comprehensive convention on the law of the sea and hoped that all States would refrain from taking any action which might adversely affect their relations with other States or the success of the Conference.

10. Mr. VALENCIA-RODRÍGUEZ (Ecuador) said that his country's President and Minister for Foreign Affairs had, in recent statements, condemned the action of the United States Government as being contrary to peaceful coexistence and as an attack on the sovereignty of States. His delegation had associated itself with the statement made on behalf of the group of coastal States in the interests of consensus but wished to place on record its disagreement with the assertion that customary international law supported the claim of a 12-mile territorial sea. The Hague Conference of 1930 and the Geneva Conference of 1958 and 1960 had demonstrated that there was no generally accepted norm regarding the breadth of the territorial sea. The only thing that was certain in customary international law was that the breadth of the territorial sea varied from three to 200 miles in accordance with the unilateral proclamations of States. Accordingly, more than 25 years earlier, Ecuador had proclaimed its territorial sea to be 200 miles wide and, in so doing, it had violated no provision of international law whatsoever.

11. Mr. RICHARDSON (United States of America) said that his delegation was surprised and distressed that press reports, which were themselves distorted, had caused such a stir at the Conference, where the views of the United States with respect to navigation and overflight were well known to all participants. Press reports notwithstanding, those views had not changed. The activities of the United States on the seas were fully in keeping with its long-standing policy and with international law.

12. At the same time, it remained the firm position of his delegation that a comprehensive convention on the law of the sea offered by far the best, and perhaps the last, opportunity to establish a universally agreed and conflict-free régime governing all uses of the world's oceans and their resources. His delegation had indicated that it could accept a 12-mile territorial sea, coupled with transit passage of straits used for international navigation, as part of an over-all package deal. In that connexion, he noted that the group of coastal States had reaffirmed its determination to continue working towards the early adoption of a generally accepted comprehensive convention. The Conference should not be diverted from the common goal of all participants by a debate on the very differences that had compelled Governments to enter into negotiations in the first place. The Conference provided a forum for bridging those differences, and his Government continued to be firmly dedicated to that objective.

3. Mr. ARIAS SCHREIBER (Peru) said that his delegation shared the feelings and legitimate concerns of the group of coastal States concerning the unfortunate episode involving the United States Government. On 12 August, his country's Minister for Foreign Affairs had made a statement condemning the United States action as inopportune in view of the ongoing negotiations at the Conference and as reflecting a position which had been overtaken both by events and by the development of international law. Official United States statements, including the statement just made by the United States representative, which reaffirmed unacceptable positions concerning the territorial sea and the régime of the high seas, only partially allayed the concerns of his delegation. In the view of the vast majority of States, the high seas began beyond the 200-mile limit. His country exercised jurisdiction and sovereignty over the seas and the subsoil thereof up to a distance of 200 miles from its shores, without prejudice to the freedom of navigation.

14. On 18 August, the Ministers for Foreign Affairs of Chile, Colombia, Ecuador and Peru had issued a joint statement protesting against the United States policy and reserving the rights of their Governments against any violation of the maritime zone in which they exercised sovereignty and jurisdiction, without prejudice to freedom of navigation. That statement had been circulated as document A/CONF.62/85.

15. Mr. de la GUARDIA (Argentina) said that as a representative of one of the three countries named in the press reports to which the representative of Mexico had referred, he wished categorically to reaffirm the validity of his country's rights in respect of the maritime areas under its national sovereignty. Argentina's position was supported by long-standing practice and the existing state of customary international law. His country was prepared to defend its rights against any State which challenged them. It was convinced that it was fully justified to require prior authorization for the passage of warships through its territorial waters. His delegation had consistently maintained that position at the Conference and had supported a proposal to that effect submitted by the delegation of China in the earlier part of the session at Geneva. The language of the statement made on behalf of the group of coastal States had not been aggressive but had merely reaffirmed the rights of the members of the group.

16. Mr. LOVO-CASTELAR (El Salvador) said that his country, although it was a member of the group of coastal States and shared the concerns of the group over the recent press reports, did not agree with the statement that international customary law supported a 12-mile territorial sea. He agreed with the representative of Ecuador with regard to the conclusions to be drawn from the outcome of the Hague and Geneva Conferences. El Salvador had, since 1950, exercised

sovereignty over a band of sea extending to 200 miles from its coasts, without prejudice to the freedom of navigation in that zone.

17. Mrs. NGUYEN NGOC DUNG (Viet Nam) endorsed the statement made on behalf of the group of coastal States. Her Government's view was that the recent action by the United States Government constituted a violation of international law and practice and an attack on the sovereignty of coastal States. Her Government categorically rejected the United States position and would take appropriate measures to protect its full sovereignty over the territorial sea, continental shelf and other maritime zones under its jurisdiction.

18. Mr. CALERO RODRIGUES (Brazil) stated for the record that his country's interpretation of existing customary international law was the same as that given by the representatives of Ecuador and El Salvador.

19. Mr. TOLENTINO (Philippines) associated his delegation with the criticism of United States policy expressed by previous speakers. State practice had long ago eliminated the three-mile limit. If some States wished to maintain that limit, they were free to do so, but they could not impose it on others.

20. Mrs. de BARISH (Costa Rica) reaffirmed the support of her delegation for the statement made on behalf of the group of coastal States and drew attention to her Government's views on the subject, as set out in detail in a letter dated 15 August 1979 addressed to the President of the Conference, circulated as an official document under the symbol A/CONF.62/81.

21. Mr. KOZYREV (Union of Soviet Socialist Republics) expressed regret at the fact that the statement made by the representative of the United States contained no refutation or denial of the press reports in question. The group of coastal States was therefore justified in its anxiety, to which the Soviet delegation was sympathetic. On the other hand, it was a matter of some concern that attempts had been made by some speakers to justify the 200-mile limit on the basis of the results of the first United Nations Conference on the Law of the Sea held at Geneva in 1958, the purpose of which had in fact been to fix the limit of territorial waters at a distance of between 3 and 19 miles. Moreover, in the course of the proceedings of the current Conference, more than 100 States had spoken in favour of the 12-mile limit. That had to be borne very clearly in mind in any discussion of the regrettable news which had appeared in the press regarding the orders given to the United States Air Force and Navy.

22. Mr. SAMPER (Colombia) expressed support for the statement made on behalf of the group of coastal States. The Colombian Government had, individually and jointly with the other countries of the South Pacific Permanent Commission, stated that any attempt to ignore the validity of the new institutions concerned with the sea, especially as it affected Latin America, was unacceptable. It reserved its rights with regard to any violations and called for solidarity in the defence of mutual interests.

23. Mr. KE Zaishuo (China) expressed the full support of his delegation for the statement made by the representative of Mexico on behalf of the group of coastal States. He said it was the basic position of his Government that no international law existed establishing a uniform limit to the breadth of the territorial sea, the delimitation of which was a matter of State sovereignty. It had consistently maintained that foreign warships could not enter territorial waters unless they gave prior notice of their intention and received the consent of the coastal State in question. In the light of that policy, his delegation could not but express some concern at the recent press reports mentioned in the statement of the group of coastal States. It had noted the statement made by the representative of the United States and hoped that, in future, no

action would be taken which adversely affected or threatened the sovereignty of the coastal States or the smooth operation of the Third Conference on the Law of the Sea.

24. Mr. MAZILU (Romania) said that, in the opinion of his delegation, the territorial sea up to a limit of 12 miles was an integral part of national territory, and the innocent passage of warships through the territorial sea was subject to the prior authorization of the coastal State.

25. Mr. FERRAO (Angola) expressed the support of his delegation for the statement made on behalf of the group of coastal States and said that it was unacceptable that any State should take unilateral action which could prejudice the outcome of the Conference.

26. Mr. FERNÁNDEZ BALLESTEROS (Uruguay) stated that his Government reserved its right over its territorial waters, as enshrined in its own legislation, which was in keeping with customary international law.

Place and date of the ninth session

27. Mr. ZULETA (Special Representative of the Secretary-General) said that, in the light of the decision of the Conference to hold its next session in two stages and of the advisability of avoiding any clash with meetings of bodies established under the Charter, which, because they took priority, could affect the provision of adequate services, the secretariat suggested that the first part of the ninth session should take place in New York from 3 March to 4 April 1980, and the resumed ninth session at Geneva from 28 July to 29 August 1980, subject, of course, to the agreement of the Committee on Conferences and the endorsement of the General Assembly.

28. While there was room for some flexibility with regard to those dates, he reminded members that the first regular session of the Economic and Social Council would begin during the week of 7 April 1980 and that its second regular session, to be held at Geneva, would not be concluded until the end of June.

29. Mr. CARÍAS (Honduras), speaking on behalf of the Group of 77, asked whether it would be possible for facilities to be made available for some three and a half to four days before the beginning of the first part of the session, in order to allow for consultations in the contact group. To accommodate those consultations, he proposed that the opening of the session might be delayed until 5 or 6 March.

30. The PRESIDENT said that he would prefer not to shorten the session in that way, especially since its work would have to be concluded before the Easter holiday. It was his understanding that facilities could be made available for consultations on 27, 28 and 29 February.

31. Mr. CARÍAS (Honduras), speaking on behalf of the Group of 77, said he hoped that the needs of that Group would be taken fully into account in drawing up the programme of work for the session, so that it would be able to take its full part in the first stage of negotiations.

32. Mr. ENGO (United Republic of Cameroon) inquired whether similar facilities would be available from 27 February for meetings of regional or interest groups.

33. The PRESIDENT assured the representatives of Honduras and the United Republic of Cameroon that every effort would be made to meet the wishes of all groups.

34. Mr. KOH (Singapore) inquired of the Special Representative of the Secretary-General whether facilities could be made available for the resumed ninth session to take place in New York.

35. Mr. ZULETA (Special Representative of the Secretary-General) confirmed that facilities could be provided and stated once again that any decision taken by the Conference in that regard would require the endorsement of

the General Assembly, since a change would have to be made in the calendar of conferences. That applied equally, whether the resumed session was to be held at Geneva or in New York.

36. Mr. EVENSEN (Norway) said there was wisdom in holding the first part of the session in New York and the second at Geneva.

37. Mr. STAVROPOULOS (Greece) pointed out that facilities at Geneva were inadequate, especially since there were no voting machines.

38. The PRESIDENT said it was his understanding that some arrangements could be made at Geneva if it became necessary to resort to a vote, although that might involve some travelling.

39. Mr. KOROMA (Sierra Leone) suggested that the dates of the sessions of the Economic and Social Council might be changed, in view of the fact that the General Assembly had decided to give priority to the Third United Nations Conference on the Law of the Sea.

40. The PRESIDENT said that that was out of the question; the Conference could never take precedence over a body such as the Economic and Social Council, established under the Charter. He believed that for logistical reasons it might be better to hold the resumed session in New York rather than at Geneva.

41. Mr. KOH (Singapore) proposed that, for the convenience of delegations, for reasons of economy and ease of communications with Governments, and also because of availability of voting machines, both parts of the ninth session should be held in New York. He had examined the list of representatives attending the current session and had found that 242 of them were based in New York and only 14 at Geneva. While that situation might be altered somewhat when the session was held at Geneva, there would nevertheless be a preponderance of representatives from New York. Moreover, far more Member States had missions in New York than at Geneva and that could be an important factor at the resumed session, when it might be necessary for delegations to communicate rapidly with their Governments. Since the secretariat of the Conference was also based in New York, that city clearly offered economies in terms of travel and expenses. Although he very much hoped that voting would not be necessary, the possibility of the need for a vote could not be excluded. It was true that facilities for voting did exist at Geneva, but they were at some distance from the Palais des Nations.

42. He hoped the President and other representatives would find his arguments for holding both parts of the session in New York persuasive.

The meeting rose at 6 p.m.

119th meeting

Friday, 24 August 1979, at 10.45 a.m.

President: Mr. H. S. AMERASINGHE

Place and date of the ninth session (concluded)

1. The PRESIDENT recalled that it had been agreed that the ninth session would be divided into two parts, each to last five weeks. The first part would be held from 3 March to 4 April 1980, and would be preceded by informal meetings of working groups on 27, 28 and 29 February. The second part would be held from 28 July to 29 August, at which time, as agreed, the work of the Conference was to be completed and the text of the convention approved. If there was no objection, he would take it that there was agreement on that timetable.

It was so decided.

2. The PRESIDENT noted that there was, however, some disagreement as to whether the first part of the session should be held at Geneva and the second in New York or vice versa, or whether both parts should be held in New York. Among the reasons put forward for holding both parts in New York was the lack of voting machines at Geneva; however, there were voting machines at Geneva, but they were at the International Conference Centre and not at the Palais des Nations, which meant that the delegates would have to move to the Centre in order to use them. If it was agreed that the second part of the session should be held in New York, account must also be taken of the problems of accommodation which would arise from the fact that the Democratic Party would be holding its convention there.

3. Mr. GAYAN (Mauritius) said there were very compelling reasons for holding both parts of the session in New York. Delegations must be able to work on equal terms, with facilities for communicating with their respective capitals, and that caused problems for countries which did not have missions at Geneva. Consideration should also be given to the problem of voting and the fact that the need to move to

the International Conference Centre would cause delays in taking decisions.

4. Mr. ARIAS SCHREIBER (Peru) said that, although the most productive sessions so far had been those held at Geneva, his delegation was inclined to favour holding part of the session in New York and part at Geneva. In any event, the matter could be put to a vote.

5. Mr. ADJO (Nigeria) said that, while his delegation had favoured the holding of a single eight-week session, it had agreed to the proposal to divide the session into two parts as a compromise solution. With regard to venue, it would prefer the entire session to be held in New York.

6. Mr. PINTO (Portugal) said it was clear that better results had always been obtained at Geneva and, while New York had its attractions, the important thing was to reach agreement on a convention. In his view, there was no need for a vote, since the Conference had always taken its decisions by consensus.

7. Mr. EVRIVIADES (Cyprus) said that he preferred the holding of both parts of the session in New York.

8. Mr. GOERNER (German Democratic Republic), speaking on behalf of the group of Eastern European States, said that the group favoured Geneva as the place where most progress could be made. However, as a compromise, it would agree to the holding of one part of the session in New York.

9. Mr. ORREGO VICUÑA (Chile) said that the Conference should take into account the availability of services and facilities which would advance its work. His delegation would prefer the first part of the session to be held at Geneva and the second in New York.

10. Mr. KOROMA (Sierra Leone) agreed that the sessions held at Geneva had so far produced the best results. The