

# **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.120**

## **120<sup>th</sup> 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)*

# 120th meeting

Friday, 24 August 1979, at 3.35 p.m.

President: Mr. H. S. AMERASINGHE

## Report of the Third Committee (concluded)

1. Mr. JAGOTA (India) commended the Chairman of the Third Committee on his success in resolving some of the thorny issues relating to marine scientific research. With regard to the amendment to article 246 *bis*, as set out in the Chairman's report (A/CONF.62/L.41), his delegation regarded subparagraph (a) as an interpretative clause referring to paragraph 3 of article 246 of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1) and would therefore have no difficulty in accepting it. However, it wished to reserve its position on the amendments to the substantive clauses of article 246 *bis* (subparas. (a) and (b)), which amended article 246 in the light of the so-called "dual régime" for marine scientific research. His Government would give careful study to those proposed amendments during the intersessional period and would make its views known at the next session. Similarly, his Government wished to reserve its position on the amendment to article 253. Since his delegation favoured the retention of the existing provisions of paragraph 2 of article 296, it could not, at the present stage, agree to the amendment to article 246.

2. Mr. LUPINACCI (Uruguay) expressed appreciation for the tireless efforts of the Chairman of the Third Committee. His delegation had hoped that the informal negotiations on marine scientific research could be considered to have been concluded in view of the substantial support which the Chairman had noted in paragraph 2 of his report, referring to the first part of the eighth session. Without wishing to pre-judge any reservations which his Government might make on some of the amendments at a later stage, he expressed disagreement with the Chairman's assessment of the outcome of the negotiations, which could be inferred from the title of the annex to his report. The proposed amendments had not emerged from the intensive negotiations but had been suggested by the Chairman on the basis of his personal assessment of those negotiations. His delegation had reservations on some of the formulations, particularly those relating to subparagraph (b) of article 246 *bis* and to article 253, on which a large number of delegations had voiced objections. In that connexion, he wished to reiterate his Government's firm position that marine research in zones under the jurisdiction of any coastal State must, in all cases, be subject to the prior consent of that State. Any marine scientific research activity in any part of such a zone had to be governed by the consent mechanisms set forth in the informal composite negotiating text.

3. He stressed that any reservations his delegation might have regarding some of the articles would not, of course, affect its willingness to co-operate in ensuring the successful outcome of the work of the Third Committee.

4. Mr. McKEOWN (Australia) said that the report contained some significant proposals which his delegation believed could offer a good basis for the work of the Third Committee at the next session. However, the Chairman's statement in paragraph 8 of his report that some of the formulations had acquired widespread support and could be considered as generally acceptable was a little premature inasmuch as the proposed amendments had only been available for a few days and Governments had not had any opportunity to consider them. Pending that consideration, he reserved his delegation's position. In his view, all the Chairman's proposals should be considered at the next session on an equal basis.

5. Mr. AL-WITRI (Iraq) expressed gratitude to the Chairman of the Third Committee for his efforts to reach compromise formulae. The position of the group of Arab States on marine scientific research, namely, that the jurisdiction of coastal States should not extend beyond the 200-nautical-mile limit and that such activities should be subject to the provisions governing the high seas and the system of exploration and exploitation of the Authority, was well known. For that reason, his delegation had reservations about the proposed amendment to subparagraph (b) of article 246 *bis*. The Third Committee should in any case await the outcome of the negotiations in the Second Committee, which would have a bearing on that article, before reaching a final decision. His delegation reserved the right to oppose any amendment submitted to the Third Committee which could adversely affect the land-locked and geographically disadvantaged States, whose rights should be stated in the relevant provisions of the convention.

6. Mr. CLINGAN (United States of America) expressed appreciation to the Chairman of the Third Committee for his report but noted that the compromise formulae contained in the annex to that report did not meet all the concerns of his delegation. However, since his delegation recognized that those formulae were the outcome of lengthy negotiations and reflected the needs of some other delegations, it would respect the principles of the negotiating process and could agree to the compromise formulae if other States found them acceptable.

7. Mr. SMØRGRAV (Norway) said that the Third Committee had gone a long way towards satisfactorily resolving the issues within its purview. He presumed that it was owing to lack of time that the amendments proposed in the Chairman's report had not been submitted for consideration by the Committee. The Chairman's assessment in paragraph 8 of his report was somewhat optimistic, to say the least, and his delegation shared the views expressed by the representative of Peru in that regard.

8. In his opinion, there would never be a consensus on article 246 *bis*, and, inasmuch as that article had not been thoroughly discussed in the Committee, the proposal contained in the annex to the Chairman's report could not be considered a compromise formula. In the view of his delegation, the Chairman's assessment contained in paragraph 6 of his report did not reflect the facts.

## Report of the First Committee

9. Mr. ENGO (United Republic of Cameroon), speaking in his capacity as Chairman of the First Committee, reported on the work of that Committee at the current session (see A/CONF.62/L.43).

## Report of the Second Committee

10. Mr. AGUILAR (Venezuela), speaking in his capacity as Chairman of the Second Committee, reported on the work of that Committee at the current session (see A/CONF.62/L.42).

## Report of the Drafting Committee

11. Mr. BEESLEY (Canada), speaking in his capacity as Chairman of the Drafting Committee, introduced the Committee's report (A/CONF.62/L.40).

12. The future work of the Drafting Committee fell into three parts. First, he noted that yet another list of recurring

words and expressions (Informal Paper 2/Add.1) remained to be dealt with. While the language groups had submitted reports on that paper, the co-ordinators had not yet begun work on it. Secondly, it might be useful for the Drafting Committee to review a version of the revised informal composite negotiating text which incorporated its recommendations. Thirdly, the time might have come from the Committee to initiate a preliminary article-by-article review of the revised negotiating text.

13. In conclusion, he noted that the possibility of holding an intersessional meeting of the Drafting Committee had been raised. Since, however, the Committee had not yet produced a second revision of the negotiating text, he did not recommend such meetings. On the other hand, provision should be made, if possible, for intersessional meetings of the language groups.

#### Report of negotiating group 7

14. Mr. MANNER (Finland), speaking in his capacity as Chairman of negotiating group 7, read out the report of the group (NG7/45).

#### Report of the group of legal experts on final clauses

15. Mr. EVENSEN (Norway), speaking in his capacity as Chairman of the group, read out the latter's report (FC/16) and drew attention to the draft text contained in the annex to that document.

#### Report of the group of legal experts on the settlement of disputes relating to part XI

16. Mr. WUENSCHÉ (German Democratic Republic), speaking in his capacity as Chairman of the group, introduced the latter's report (A/CONF.62/C.1/L.26, appendix B).

#### Report of the President on the work of the informal plenary meeting of the Conference on the settlement of disputes

17. The PRESIDENT introduced his report (A/CONF.62/L.45) and said that the informal plenary meeting had considered the proposals submitted by Switzerland and the Netherlands (SD/1). The drafting clarification of article 284, paragraphs 1, 2 and 3, made by the President had been found acceptable, as had the proposal in document SD/1 regarding the termination of conciliation proceedings by either party where the conciliators themselves had been appointed but failed to appoint the chairman of the commission (annex IV, art. 3, para. 4). The question of the permissible number of national conciliators seemed to require further consultations; he had suggested that consideration might be given to incorporating aspects of the provisions of both A/CONF.62/WP.10/Rev.1 and SD/1 by permitting each party to appoint one national unless the parties agreed otherwise. With regard to the listing of the alternative forums in article 287, paragraph 1, the Netherlands and Swiss delegations had indicated their willingness to consider withdrawing their proposal. The other proposals made by the two delegations in document SD/1 had been withdrawn.

18. As a consequence of the redrafting of article 296 by negotiating group 5, article 298, paragraph 1 (b), would need to be redrafted to bring it into line with the new structure of article 296. The changes suggested in the report of the Chairman of the group of legal experts on the settlement of disputes relating to part XI could perhaps be accepted by the Conference without the need for separate consideration. The outstanding issues referred to by the Chairman of the group in his report must be dealt with at the first stage of the ninth session, and appropriate provision had been made in the decisions taken by the Conference on the programme of work for that session. The Conference must take note of the dis-

pute settlement provisions on the question of marine scientific research, as referred to in the report of the Third Committee. Finally, he proposed that, since all the matters falling within the competence of negotiating group 7 were closely interrelated and the Chairman of the negotiating group had not presented any new formulation which would satisfy the conditions laid down in document A/CONF.62/62,<sup>1</sup> the question should not be discussed further at the present stage.

#### Report of the President on the work of the informal plenary meeting of the Conference on final clauses

19. The PRESIDENT introduced his report (A/CONF.62/L.44) and said that the plenary Conference had held 11 informal meetings on final clauses between 23 July and 23 August 1979. It had discussed the relevant subjects and issues in two categories: those likely to prove controversial and those that could be considered non-controversial. After a preliminary discussion of the non-controversial items, it had been agreed that they should be referred to the group of legal experts on final clauses with the mandate to examine the technical aspect of the final clauses and the establishment of a preparatory commission and, taking into consideration the discussions in the informal plenary meeting, to prepare draft texts without seeking to resolve the political issues involved.

20. Subsequently, the controversial items had been taken up and discussed in the informal plenary meeting. The discussion on those items had been summarized in documents FC/3 to 7, 9, 11, 13 and 17.

21. Two items remained unfinished, namely, the question of participation in the convention and the establishment of the preparatory commission, both of which would be taken up at the next session.

22. Mr. CALERO RODRIGUES (Brazil), speaking on a point of order, noted that most of the reports submitted were not as yet available to delegations in all languages; he asked whether they would be made available at the current meeting and whether they would be distributed directly to delegations as soon as they were available.

23. Mr. LUPINACCI (Uruguay) pointed out that there was an error in the Spanish text of article 188 in appendix A, section D, of document A/CONF.62/C.1/L.26. The Spanish version of paragraph 1 (b) of the article should be brought into line with the English and French versions to the effect that an *ad hoc* chamber could be established upon the request of any party to the dispute.

24. Mr. CASTILLO-ARRIOLA (Guatemala) said that his delegation strongly supported the view that participation in such an important convention as that on the law of the sea should be open only to sovereign States.

25. The PRESIDENT reminded the representative of Guatemala that it had been agreed that no further statements relating to matters of substance would be made.

26. Mr. ZULETA (Special Representative of the Secretary-General), replying to the questions raised by the representative of Brazil, said that all reports submitted to the plenary meeting would be distributed as soon as they became available in all languages. Inasmuch as some had been submitted just before the current meeting, it was not physically possible to complete translation and reproduction before the end of the meeting.

27. Mr. ABOUL KHEIR (Egypt) said that the error referred to by the representative of Uruguay with regard to article 188 existed in the Arabic text as well.

<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).

28. Mr. de LACHARRIÈRE (France) said that the French versions of most of the documents were no longer available, which made work extremely difficult. He requested that additional copies be made available immediately.

29. Mr. NJENGA (Kenya), speaking on a point of order, proposed that since the President had stated that it was his intention not to give any delegation the floor to speak on a matter of substance—a decision which he supported—and since few of the documents were available, the meeting should be adjourned.

30. The PRESIDENT noted that the sense of the meeting seemed to be strongly in favour of the proposal made by the representative of Kenya.

31. Mr. ARIAS SCHREIBER (Peru), speaking on a point of order, said that it was his understanding that the Kenyan proposal on adjournment referred to the consideration of reports and not to other matters on which delegations might wish to make statements. In particular, the representative of Honduras had an important statement to make on behalf of the Group of 77.

*The meeting was suspended at 5.50 p.m. and resumed at 6.35 p.m.*

#### Statement by the Chairman of the Group of 77

32. Mr. CARÍAS (Honduras), speaking on behalf of the Group of 77, read out a statement prepared by the latter's group of legal experts on unilateral legislation concerning mining of the sea-bed (A/CONF.62/89).

33. Mr. ALDRICH (United States of America) said that his delegation had already presented its position, most recently on 28 August and 15 September 1978<sup>2</sup> and on 19 March 1979,<sup>3</sup> with regard to the enactment of national legislation designed to regulate the conduct of deep sea-bed mining and exploration and exploitation activities undertaken beyond the limits of national jurisdiction. His Government rejected the contention that such legislation would be illegal and potentially disruptive to the Conference. It should be remembered that United Nations General Assembly resolutions, irrespective of the majorities by which they were adopted, were not legally binding on any State in the absence of an international agreement that gave effect to such resolutions and that was in force for the State concerned. There existed nothing in customary or conventional international law that precluded Governments from acting to regulate activities of their citizens or that forbade Governments or private persons or entities access to the sea-bed beyond the limits of national jurisdiction for the purposes of exploring for and exploiting the resources there. If the Conference succeeded in producing a treaty that established an international régime for the regulation of such exploration and exploitation, the States for which that treaty was in force would forgo the exercise of the freedoms of the high seas in question. However, for States not bound by such a treaty there were no legal impediments to those activities. Legislation currently being contemplated in the United States would, of course, by its own terms be superseded by a treaty in force for the United States. Legislation designed to establish a regulatory régime for deep sea-bed mining was compatible with the aims of the Conference as they had emerged in the course of the negotiations. It was widely recognized that commercial recovery of deep sea-bed hard mineral resources could not realistically begin until the middle of the 1980s, which was far beyond the date that the Conference had set for itself for completion of the convention. The legislation therefore posed no threat to the orderly establishment of an international régime to regu-

late deep sea-bed mining activities. In the meantime, legislation was needed if the sizeable investment required for the continued development of technology was to be made.

34. The United States had no intention of disrupting or adversely affecting negotiations currently under way. It should, however, be realized that the United States would not agree to an unworkable international régime simply because it had no alternative means of access to the resources it needed. An acceptable convention must provide assured and non-discriminatory access to deep sea-bed resources for States and entities sponsored by States on reasonable terms and conditions and with security of tenure for miners.

35. Mr. PIRZADA (Pakistan) said that the decision not to attempt further revision of the revised informal composite negotiating text at the current session was wise, since a number of the elements of the over-all package were not available and a piecemeal approach could not be followed. Delegations would need to study the new text in detail before they could give their considered views on them. With regard to the system of exploration and exploitation, article 5 of annex II, on transfer of technology, needed to be improved and strengthened. The question of joint arrangements needed to be clarified and expanded, and a mutually acceptable production control formula was urgently required.

36. The new financial arrangements proposed by the Chairman of negotiating group 2 would reduce the over-all income of the Authority by approximately \$250 million per mine site, a shortcoming that would have to be rectified. With regard to the Council, decision-making and composition were still outstanding issues which would have to be resolved. With regard to dispute settlement, he thought that the first and subsequent elections to the Tribunal should be held at a regular session of the Assembly of the Authority and did not require a specially convened meeting of the States parties to the convention. With regard to the delimitation of the continental shelf and the exclusive economic zone, his delegation strongly supported application of the principle of equity in delimitation, mutually agreed interim arrangements and binding third-party procedures for dispute settlement.

37. With regard to Third Committee matters, his delegation felt that marine scientific research should promote scientific knowledge for the benefit of mankind, but a coastal State must have the right to withhold consent to a project if the latter conflicted with its vital interests. Similarly, a coastal State had the right to require that an ongoing research project be suspended or terminated if it was found to be in violation of the relevant provisions of the convention or was prejudicial to the security and vital interests of the coastal State. The rights and discretion of coastal States to withhold consent to marine scientific research under certain circumstances and to suspend or terminate an ongoing project in its exclusive economic zone or continental shelf could not be made subject to dispute settlement procedures. He warned that any proposals which might bring about fundamental change in the portion of the draft convention dealing with marine scientific research would upset the delicate balance already achieved and would result in reopening the whole package.

38. His delegation favoured the step-by-step approach leading up to the formalization and final adoption of the convention in 1980 along the lines approved by the Conference at the 119th meeting.

39. The PRESIDENT reminded the representative of Pakistan that he had requested delegations not to speak on matters of substance.

40. Mr. TORRAS DE LA LUZ (Cuba), speaking on a point of order with the support of Mr. ADIO (Nigeria), urged the President not to recognize any further speakers and to

<sup>2</sup>*Ibid.*, vol. IX (United Nations publication, Sales No. E.79.V.3), 109th plenary meeting.

<sup>3</sup>*Ibid.*, vol. XI (United Nations publication, Sales No. E.80.V.6), 110th plenary meeting.

adjourn the meeting in accordance with the proposal made by the representative of Kenya, which the Conference had accepted.

41. Mr. UPADHYAY (Nepal), speaking on a point of order, said that his delegation had not opposed the Kenyan proposal, but now that the meeting had resumed it wished to speak.

42. Mr. FLEISCHHAUER (Federal Republic of Germany) said that his delegation agreed with the decision not to make statements on the reports submitted by the various committees and negotiating groups but wished nevertheless to respond to the statement made by the representative of Honduras.

43. Mr. RAOELINA (Madagascar) said that many delegations were not in favour of adjournment and that there must be equity in the treatment of delegations. Some delegations wished to speak and should have the right to do so before closure.

44. The PRESIDENT said that it had been agreed that delegations would not speak on matters of substance, and a proposal had been made to adjourn the meeting. He felt that the proposal was supported by a majority of participants, but, in order to be absolutely certain, it would be best to hold a vote.

*The proposal was adopted by 57 votes to 9, with 6 abstentions.*

#### Closure of the session

45. The PRESIDENT said that the Conference had had a strenuous session and had now reached a critical stage. The conduct of all countries interested in seeing the successful conclusion of the Conference must be consistent with the professed desire of all to arrive at a convention on the law of the sea which was universally acceptable. He believed that more co-operation and mutual accommodation would be required during the coming final stage. He reminded delegations that the first set of formal amendments should be submitted by the final day of the first part of the ninth session in New York and further amendments by the first day of the resumed session at Geneva.

46. Mr. KOZYREV (Union of Soviet Socialist Republics), speaking on a point of order, said it was his understanding that the decision taken by the meeting to adjourn implied that the consideration of other reports would be deferred until the beginning of the resumed session at Geneva.

47. The PRESIDENT said that consideration of the Third Committee's report had been completed and the reports of the First and Second Committees and of the negotiating groups would be taken up at the beginning of the ninth session. After thanking delegations for their hard work and co-operation in moving the Conference forward, he declared the session closed.

*The meeting rose at 7.20 p.m.*