

Third United Nations Conference on the Law of the Sea

1973-1982

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A/CONF.62/L.47

Report of the Chairman of negotiating group 7

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

disrupt the schedule and defeat the declared objective of the Conference.

3. The time-table approved by the Conference provided that, in the first stage covering the first three weeks of the ninth session, the following items would need attention: the completion of the work on the final clauses in the informal plenary with the assistance of the group of legal experts on final clauses; the conduct of the necessary consultations, involving all delegations, by the Chairmen of the three committees, assisted by the chairman of the negotiating groups and the group of legal experts on settlement of disputes relating to Part XI, within their respective spheres of competence, in order, to the extent possible, to reach compromise solutions on outstanding issues; and informal meetings by the drafting committee so that it might complete its work on informal recommendations which would have to be taken into account in the preparation of the final version of the informal composite negotiating text.

4. During the second stage, beginning at the start of the fourth week, on 24 March, there would be a formal discussion in plenary to give delegations an opportunity, before the preparation and the adoption of the revised informal composite negotiating text as a final draft convention, to place on record their position, both in regard to proposed revisions and on the entire package. That would also be the obvious time and place for any comments on the Committee reports which had been left outstanding at the close of the last session. That discussion by the plenary of proposed changes in the negotiating text before revision was effected was necessary to enable the collegium, as required by document A/CONF.62/62,* to prepare the revision.

A time-limit of 15 minutes for every speaker was set by the Conference on the understanding that delegations would be permitted to present written statements, whose contents would appear as part of the official records of the Conference, without forfeiting the right to make oral statements as well. These oral statements themselves would form part of the summary records.

It was estimated that about 12 plenary meetings of three hours each, with night meetings, would be necessary for this purpose and that the debate would be concluded in one week.

In the interests of coherent discussion designed to promote agreement, it would be necessary for delegations to refrain

from reopening issues which had already been discussed at length but had not found sufficiently wide acceptance to appear in the precise form in which they had originally been presented to merit inclusion in the negotiating text.

5. At the end of that period, which was expected to continue into the middle of the fifth week, the President and the Chairmen of the committees, with whom the Chairman of the Drafting Committee and the Rapporteur-General would be associated, would revise the informal composite negotiating text, in accordance with the provisions prescribed in paragraphs 10 and 11 of A/CONF.62/62, and read as follows:

"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.

"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."

6. The third stage would begin in the middle of the fifth and last week of the first part of the ninth session, which would be Wednesday, 2 April, thus leaving three days for the work of the third stage. During this stage the following items of work would have to be undertaken. The plenary should meet to decide on altering the status of the revised negotiating text to that of a final Conference document that would serve as a draft convention. All formal proposals which had previously been presented would be treated as having lapsed without prejudice to the right of any State to move a fresh amendment similar to or different in substance from the one that had lapsed, when the draft text had been given the status of a final draft convention.

7. After the decision was taken to give the revised negotiating text the status of a formal Conference document, the Conference must take a decision on the question of referring it for examination to the three committees and the plenary, operating as a committee.

**Ibid.*, vol. X (United Nations publication, Sales No. E.79.V.4).

DOCUMENT A/CONF.62/L.47*

Report of the Chairman of negotiating group 7

[Original: English]
[24 March 1980]

1. At the end of the eighth session of the Conference it was decided among other things that during the first three weeks of the ninth session the chairmen of the negotiating groups "should conduct the necessary consultations within their respective spheres of competence in order, to the extent possible, to reach compromise solutions on outstanding issues". Following this scheme of work as well as the advice of the coordinators of the main interest groups within negotiating group 7, that is, the sponsors of documents NG7/2 and NG7/10 and Add.I respectively, the Chairman conducted consultations with the members and supporters of the groups concerned. Partly these consultations took place in separate meetings with the groups, partly they involved contacts with individual delegations belonging to either one of them. In addition also the negotiating group as a whole convened in two meetings. According to the working programme of the Conference, negotiating group 7 will conclude its work upon the issuance of the present report.

2. The discussions mentioned above focused mainly on paragraph 1 of articles 74 and 83 of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1) with the understanding that according to a number of delegations all the central questions subject to consideration in negotiating group 7—delimitation criteria, interim measures and settlement of delimitation disputes—were finally to be settled together as parts of a "package" solution.

DELIMITATION CRITERIA

3. At the outset of the consultations with the Chairman, the members of both interest groups were asked to indicate whether they would be prepared to use as a basis of further discussions the Chair's informal proposal on delimitation criteria issued at the end of the eighth session in document NG7/44 and containing as a new element of delimitation a

*Incorporating document A/CONF.62/L.47/Corr.1, dated 1 April 1980.

reference to the equality of States in their geographical relation to the areas to be delimited. However, such a reference was found rather ambiguous by several delegations on both sides and even otherwise it proved apparent that the text in NG7/44 did not enjoy support broad enough to offer improved prospects of a consensus.

4. On the other hand, during the consultations the idea was put forward that the efforts to find a final solution might be facilitated by adding to the definition of the delimitation criteria a reference to international law as forming the basis of any measure of delimitation. In order further to elaborate this suggestion, the Chair proposed some new texts containing such a reference for consideration in both groups. One of the texts seemed to attract the interest of several delegations and was accordingly submitted to thorough examination by the groups.

INTERIM MEASURES

5. In view of the short time available, the Chairman confined himself in this respect merely to referring to his report of 22 August 1979 (NG7/45)⁷ and the conclusions drawn therein of the earlier negotiations.

SETTLEMENT OF DELIMITATION DISPUTES

6. The question of dispute settlement was extensively examined at the earlier stages of the work of the negotiating group. The results of these negotiations were presented in the Chairman's report of 22 August 1979. The discussions conducted during the current session have not added any new features to the consideration of this item.

CONCLUSIONS AND SUGGESTIONS OF THE CHAIRMAN

7. In view of the consultations and negotiations held during the present session as well as the discussions conducted in previous sessions the following is offered as the Chairman's final conclusions and suggestions relating to the work of negotiating group 7.

(a) During the negotiations no agreement could be reached on any proposed text concerning the criteria to be applied in the delimitation of the exclusive economic zone or the continental shelf. This conclusion also applies to the respective formulation of articles 74 and 83 in the revised informal composite negotiating text. While the provision in the negotiating text has been supported by, or at least indicated to prove satisfactory to, a number of States, it has been described as quite unacceptable by the members of the group supporting the median line approach. Because of this firm refusal by a notable part of the members of the group to adopt the present formulation of paragraph 1 of articles 74 and 83 it is clear that it cannot be considered a text which could provide consensus on the issue.

(b) Owing to the obvious difficulties in agreeing upon a more detailed definition, it has been indicated by some delegations that the final solution might be found in a concise formulation merely identifying the two most fundamental elements of delimitation, that is, that it shall be effected by an agreement and based on international law. Such a provision might read as follows: "The delimitation of the exclusive economic zone/continental shelf between States with opposite or adjacent coasts shall be effected by agreement in accordance with international law." Other delegations, however, have considered that such a short formula would not provide adequate guidance for the process of delimitation. While it is apparent that no consensus of today may be verified on such a text, it might, however, be found to provide some prospects for a consensus of tomorrow.

(c) As mentioned, a new formulation for paragraph 1 of articles 74 and 83, reflecting some earlier suggestions and containing a reference to international law, was thoroughly examined by the two interest groups. Although neither of them could approve of the text as such nor reach agreement on adequate amendments, the consultations conducted left the

Chairman with the impression that the formulation may have contained the main elements for a solution of a substantive nature. The Chairman carefully considered the comments and views expressed by the delegations, including a request that no more proposals should be presented by the Chairman. On the basis of these considerations, the Chairman felt it to be his duty to make one further effort to open the way towards an acceptable solution. Accordingly, the Chairman prepared a revised text, as contained in the annex to this report. Even if the revised text did not as a whole meet the positions of several delegations it might, however, prove useful to be taken into account in the completion of the final consensus package of the Conference.

(d) At the end of the eighth session the Chairman introduced a new text on interim measures which was generally regarded as a positive outcome of the group's deliberations and seemed suitable to serve as one of the basic elements of the over-all solution of the delimitation questions. The said formulation would continuously seem to offer the best basis for a consensus, and, consequently, was also included in the Chairman's final suggestions as contained in the annex to this report. It should, however, be recalled that according to certain delegations, their acceptance of any provision on interim measures is dependent on the final definition of delimitation criteria.

(e) Like the issue of delimitation criteria, that of the settlement of delimitation disputes has proved notably difficult to solve. Albeit no consensus has as yet materialized, it is still the Chairman's understanding that only a proposal based upon the procedure of compulsory conciliation may prove consistent with a realistic view of the possibilities to reach a final solution on the question. This conclusion is also reflected in the respective proposal by the Chairman included in the annex to this report.

(f) As regards other provisions falling under the mandate of negotiating group 7 reference is made to the Chairman's earlier reports contained in documents NG7/39 and NG7/45.

8. It is my sincere wish that the above conclusions and the suggestions annexed to this report will benefit the final completion of the forthcoming convention. In expressing this hope I should also like to thank all the delegations that have participated in the work of negotiating group 7 for the support they have given to the Chairman as well as the members of the secretariat for their invaluable assistance at the various stages of the group's endeavours.

ANNEX

Suggestions by the Chairman of negotiating group 7

The following texts do not reflect any final compromise reached in negotiating group 7 but indicate the Chairman's assessment of alternatives which might, in time, secure a consensus at the Conference.

Article 74*

1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement in conformity with international law. Such an agreement shall be in accordance with equitable principles, employing the median or equidistance line, where appropriate, and taking account of all circumstances prevailing in the area concerned.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

* It would seem that the location in the convention of the definition of the median or equidistance line, as included in paragraph 4 of article 74 of document A/CONF.62/WP.10/Rev. I, could be left for consideration in the drafting committee. See the reports in documents NG7/21 of 17 May 1978 and NG7/39 of 20 April 1979.

⁷*Ibid.*, vol. XI, document A/CONF.62/91.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

Article 83

1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement in conformity with international law. Such an agreement shall be in accordance with equitable principles, employing the median or equidistance line, where appropriate, and taking account of all circumstances prevailing in the area concerned.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.

Article 298

1. Without prejudice to the obligations arising under section 1, a State Party when signing, ratifying or otherwise expressing its consent to be bound by the present Convention, or at any time thereafter, may

declare that it does not accept any one or more of the procedures for the settlement of disputes specified in the present Convention with respect to one or more of the following categories of disputes:

- (a)(i) Disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that the State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, and notwithstanding article 284, paragraph 3, accept submission of the matter to conciliation provided for in annex IV, and provided further that there shall be excluded from such submission any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory;
- (ii) After the Conciliation Commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2 of part XV, unless the parties otherwise agree;
- (iii) The provisions of this subparagraph shall not apply to any sea boundary dispute finally settled by an arrangement between the parties, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties.

DOCUMENT A/CONF.62/L.48/REV.1

Draft decision sponsored by the representatives of the Philippines, the United Arab Emirates and Greece as respective Chairmen of the group of Asian States, the group of Arab States and the group of Western European and other States

[Original: English]
[31 March 1980]

The Conference.

Noting that the question of the seat of the International Sea-Bed Authority has yet to be considered by it in all its aspects.

Having regard to the request made by the group of Asian States, the group of Arab States and the group of Western European and other States, as contained in documents A/CONF.62/73, A/CONF.62/75 and A/CONF.62/76,^a that all the candidates, namely, Fiji, Jamaica and Malta, for the seat of the International Sea-Bed Authority should be considered on an equal basis.

Decides that Fiji, Jamaica and Malta should be treated on an equal basis as candidates for the seat of the International Sea-Bed Authority until such time as the Conference has considered and decided upon that question;

Requests that the Presidential Collegium should list these candidates accordingly in the relevant article of the revised informal composite negotiating text.

^a *Ibid.*, vol. XI.

DOCUMENTS A/CONF.62/L.49 AND ADD.1 AND 2

Report of the President on the work of the informal plenary meeting of the Conference on the preamble

DOCUMENT A/CONF.62/L.49

Text of the preamble prepared by the President as the recommendation of the informal plenary meeting of the Conference

[Original: English]
[27 March 1980]

The States parties to the present Convention.

Prompted by the desire to settle, in a spirit of mutual under-

standing and co-operation, all issues relating to the law of the sea and aware of the historic significance of the present Convention as an important contribution to the maintenance of peace, justice and progress for all the peoples of the world,

Noting that the developments that have occurred since the Geneva Conferences of 1958 and 1960 have accentuated the need for a new and generally acceptable Convention on the law of the sea.