

# **Third United Nations Conference on the Law of the Sea**

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## **Report of the Chairman of the First Committee**

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)*

first change was to replace the words "the different zones of the ocean space" by the words "maritime space". The other suggestion was to delete all references to different zones of ocean space. The acceptance of this latter amendment would result in the draft proposal reading as follows:

"In exercising their rights and performing their duties under the present Convention all States [States Parties] shall refrain from any threat or use of force against the territorial integrity or political independence of any State or, in any other manner inconsistent with the purposes of the United Nations".

Although in this amended form the proposal appeared to have wide support, it did not completely dispose of the reservations of certain delegations as they feared that it had an impact on the package within the Second Committee, specifically with regard to article 19, paragraph 1 (a) on innocent passage and article 39 paragraph 1 (b) on transit passage, which were very

similar formulations. It was agreed, therefore, that further time should be given to interested delegations to carry out consultations so as to arrive at a compromise formulation.

7. In conclusion, although some of the proposals for general provisions before the informal plenary attracted widespread support, certain delegations seemed to consider that there was a link between all these general provisions and that none of them could be considered in isolation from the rest. It was therefore necessary to defer them all for later consideration. In these circumstances it is not possible to state that any provision, however widespread the support, could be submitted to the plenary for inclusion in a revision.

8. It would appear necessary for interested delegations to continue their consultations in an attempt to arrive at a compromise on all these general provisions. The informal plenary would have to take them up at a suitable time, either at inter-sessional meetings, if that was feasible, or failing that, at the very outset of the resumed ninth session.

## DOCUMENT A/CONF.62/L.54

### Report of the Chairman of the First Committee

[Original: English]  
[1 April 1980]

1. Considering the crucial stage that the Conference has reached in an effort to conclude these historic negotiations, it is important that the report I submit to the plenary should have as a central objective the production of guidelines based on the result of the endeavours at the level of the First Committee. It is generally agreed that the final decisions which nations must make will be based on political considerations, having regard to the needs and interests of each and, in some cases, the collective aspirations of various communities of interest. It is the opinion of this Chairman that this Conference cannot at this stage afford the luxury of illusion and that, especially in the First Committee, every avenue should be explored for ensuring the adoption of ideas that are born of understanding and compromise. To preserve "widespread support" in isolation from this reality is to reserve shocks for the concluding stages when a formal document will be submitted for final consideration by Governments.

2. The machinery for negotiations on matters within the mandate of the First Committee was set in motion from the very beginning of the first part of the ninth session held in New York. In fact, the work was carried out mainly through negotiations and subsequent consultations held in the working group of 21. The First Committee itself held two meetings at the end of this session to review its work, assess the scope of advancement towards consensus and provide guidelines regarding the second revision of the informal composite negotiating text.

3. The term "guidelines" is chosen merely to describe the indications that the statements of delegations gave on the question whether or not there were reasonable grounds to contemplate the revision of any provisions in a second revision of the negotiating text, also underlining in the process specific areas in which further negotiations and/or consultations may be necessary. The idea in this approach to review is to avoid, in the future, undesirable repetition of effort or the reopening of issues over which understanding appears to have been reached.

4. Although I have had a previous occasion in which to do this, I wish once again to express deep appreciation to my fraternal friends, Mr. Njenga of Kenya, who co-ordinated the negotiations on matters relating to the system of exploration and exploitation; Mr. Koh of Singapore, who co-ordinated those concerning the financial matters. Mr. Wuensche of the German Democratic Republic continued consultations with the group of legal experts on settlement of disputes relating to Part XI. These men continued to enhance our difficult nego-

tiating efforts with unceasing persistence. I also cannot fail to record similar gratitude to the team of dedicated men and women, assigned to our various endeavours by the special representative of the Secretary-General, for their assistance and expertise. The bulk of the credit must, however, be shared by the delegations represented in the First Committee who brought to the negotiations a growing and productive sense of mutual understanding and accommodation.

5. The Committee heard statements made by 28 representatives. The representative of Peru spoke on behalf of the contact group of the Group of 77 on First Committee matters, and commented on the reports of the co-ordinators. Other delegations representing various interests also spoke. Statements were also made by the representatives of Jamaica, Nigeria, Peru, Fiji, Malta, Cuba and the United Arab Emirates on the question of the seat of the Authority. The views and positions of all these delegations are reflected in the summary records of the First Committee.

6. The discussions in the First Committee addressed themselves mainly to the issues dealt with in the reports submitted by the co-ordinators (see A/CONF.62/C.1/L.27) and particularly on such issues as: the review conference (article 155, para. 5); transfer of technology (article 5, annex II); production policies (article 151); the fiscal status of the Enterprise (annex III, particularly articles 9 and 12); decision-making process of the Council (article 161, para. 7); anti-monopoly provisions (article 6, para. 3 (d), annex II); financial terms of contracts (article 12, annex II).

7. The explanatory notes contained in the reports of the Co-ordinators proved to be very helpful for the delegations. There appeared to be widespread feeling that important progress had been made in many areas during this part of the session, and that, on the whole, more of the suggestions submitted by the co-ordinators provided a better basis for further negotiations than those embodied in the revised informal negotiating text. Deep regret was expressed that the degree of substantial improvement was not reflected in other areas. Responding to appeals of delegations that I should cause the holding of more consultations before reporting here, I enlisted the usual co-operation of Mr. Njenga and Mr. Koh to conduct further consultations. New suggestions made by Mr. Njenga (A/CONF.62/C.1/L.27/Add.1) have now been issued as an addendum to his previous report. They reflect the best partial result that could be attained in the short interval.

8. A summary of the present situation is that some of the

compromise suggestions command wider support than others. It must be recognized, however, that some of them presented serious difficulties and did not have general support. I shall now report on these issues in some more detail and recommend that the plenary should consider them with a view to determining whether or not the suggestions I am submitting satisfy the conditions prescribed for a revision of the negotiating text.

#### RECOMMENDED ISSUES FOR CONSIDERATION BY PLENARY

##### *System of exploration and exploitation*

9. The report and textual suggestions made by Mr. Njenga, co-ordinator on exploration and exploitation issues, attracted the greatest volume of comments from members, perhaps because of the diversity of issues involved.

(1) Many delegations were critical of the provision contained in the new paragraph 5 of article 155, which deals with the review conference. The Group of 77 deplored the removal of the "moratorium" provision from the informal composite negotiating text, according to which a prohibition could be placed by the Assembly on the approval of new contracts or plans of work before agreement had been reached on a new system within five years. The Group felt that the new text provided no acceptable substitute with the idea that a three-fourths majority would be required for entry into force of any amendments to the present proposed convention. They felt that a two-thirds majority was enough for both adoption and ratification. After further consultations, Mr. Njenga has dealt with the latter preoccupation in the addendum to his report.

(2) Article 5 of annex II invited considerable criticism on the part of the Group of 77 which considered it crucial for ensuring proper working of both sides of the parallel system. One important area of criticism was the need to reintroduce the prohibition of the use of technology in which the contractor has not obtained satisfactory assurances of transfer. Another concerned the issue of "penalties" and sanctions (nicknamed "black-listing"). These two were subjected to further consultations and the results incorporated in the aforementioned addendum.

10. There were a number of additional comments on which subsequent consultations were not undertaken because of lack of time. Among these were the expressed desire for more explicit reference in paragraph 8 of article 5 to processing and refining of minerals; and the time-limit prescribed for the transfer of technology.

##### *Production policies (article 151)*

11. The addendum includes the provision for a foot-note indicating that further negotiations will be required on this subject, although the textual suggestions appear to have been considered an improvement on the revised informal negotiating text in many aspects. The valuable contribution of Mr. Nandan, Fiji, was recognized by the delegations.

12. During the review of the First Committee, significant criticism was made of the proposal for production limitation which attempted to fit a minimum ceiling and a floor. It was criticized for its complexity as much as for the ambiguity it presented. An attempt at simplification of a complex issue often involves exaggerations, errors, and misunderstanding. The issue is made even more complex when introduced to mathematical theories and legal terminology.

13. The scheme and its impact appear to be as follows: there is general agreement now that some limit should be placed on production. A scheme must be devised by which, on the one hand, sea-bed mining must be encouraged and, on the other hand, present and potential land-based producers would have a fair share of the expansion in the market relating to the minerals to be exploited in the area. Consistent with the concept of common heritage of mankind, the interests of the vast majority of countries which are neither major producers nor consumers of nickel cannot be overlooked.

14. In designing a compromise, an attempt was made to

devise a scheme to meet these preoccupations. However, interest group criticism centred on additions made to paragraph (2) (b) (iii) of article 151 relating to the provisions for trend lines, especially the adoption of 3 per cent as a minimum guaranteed growth in cases where the real trend line falls below that percentage; and the allocation of metric tonnage to sea-bed mining as safeguards which should not be in excess of 100 per cent of the real increase in consumption of nickel. According to this proposition, the critics point out that, at low points of consumption, the totality of growth allocation would be reserved to sea-bed mining and would therefore have adverse effects to prospects for land-based production. It was suggested that a substantial reduction of both the minimum guaranteed growth rate and the percentage of growth specified in the safeguard would help achieve a better balance between sea-bed and land-based production. There are of course other views to the contrary. In the circumstances I would have been inclined to recommend that we should exclude sensitive portions of the suggested text which propose the disputed figures by leaving blanks in the second revision of the negotiating text. However, in view of the foot-note not introduced in the addendum to the suggestions by the co-ordinator of negotiating group 1, I am satisfied that the scope of disagreement, adequately reflected by the debate in the First Committee, is duly underlined. I can only recommend that note should be taken of it.

##### *Financial arrangements*

15. The co-ordinator of negotiating group 2, Mr. Koh, has submitted a new text of article 12 of annex II on the financial terms of contracts and a new text on the statute of the Enterprise, annex III, which also contains, in its article 10, provisions concerning the financing of the Enterprise.

16. The two proposals of Mr. Koh were commented upon by the co-ordinator of the Group of 77, and by many delegations from both developed and developing countries. From the comments made by these delegations it would appear that the two proposals enjoy widespread and substantial support and, in comparison with the wording in the revised negotiating text, would offer a substantially improved basis for our negotiations towards the achievement of a consensus. For this reason all the delegations who spoke on the issue would support the inclusion of these two proposals in the second revision of the negotiating text.

17. Some delegations expressed reservations on some provisions contained in the two proposals. These included:

- (i) The text of article 9 of annex III which requires the Enterprise to make financial payments to the Authority under article 12 of annex II;
- (ii) Paragraph 5 of article 12, annex III, on the immunity of the Enterprise from national taxation;
- (iii) The question of shortfall in the provision of funds to the Enterprise under paragraph 3 (c) of article 10, annex III: some suggested that the shortfall should be made good by the countries whose mining companies are, or which are themselves, engaged in the exploitation of the first-generation mine-sites;
- (iv) A need to specify a limitation of the supplementary contribution of States towards the funds of the Enterprise;
- (v) To have a schedule for the repayment of interest-free loans to States formulated by the preparatory commission and embodied in the rules and regulations of the Authority;
- (vi) The ratio of 50 per cent interest-free loans to 50 per cent debt-guarantees;
- (vii) The production charge rates and the tax rates in the mixed system of financial payments;
- (viii) The composition of the Governing Board of the Enterprise;

- (ix) The relationship between the Director-General of the Enterprise and the Governing Board, as well as the relationship between the Enterprise and the Authority.

18. The view was also expressed that the proposed financial terms would impose a heavy burden on the contractors. It was also suggested that the scale to be used for determining the contributions of States towards the funds of the Enterprise should be reconsidered, and that the interest-free loans from States should be made in instalments, rather than in one lump sum.

19. On the definition of the term "return on investment", a delegation suggested that the actual net proceeds attributable to the mining sector should be used instead of 25 per cent of the contractor's net proceeds.

20. The view was also expressed that since the figures proposed in paragraphs 5 and 6 of article 10, annex II, were based on exploration and exploitation of manganese nodules, an explicit reference should be made to that effect so as to avoid their application to contracts for exploitation of other categories of resources.

#### *The Assembly and the Council*

21. The report I submitted to the First Committee on this issue was clear and, as far as considerations for revision were concerned, the statements of delegations gave no visible reasons for excluding these suggestions from the second revision of the informal negotiating text.

22. However, I feel duty bound to report that, although some delegations had to reject the *ad referendum* understanding on the suggestion I made at the eighth session relating to paragraph 2 (j) of article 160, there was wide support for the idea that it provided a far better basis for further negotiations than the revised negotiating text. I recommend some review in plenary meetings on the subject.

23. With regard to the problems of the Council, I am of the opinion that nothing that was said in the First Committee induced a change of views on my part on the necessity for further negotiations at a later stage.

#### *Settlement of disputes relating to Part XI*

24. Generally speaking there were very few comments made in the First Committee on the results obtained in the group of legal experts relating to the settlement of disputes on Part XI. Most of the provisions embodied in the text submitted by the Chairman of this group seemed to be acceptable. It should be noted, however, that some remarks were made concerning certain specific points, in particular the provision contained in paragraph 1 of article 181. Nevertheless, it is felt that

as far as this group is concerned, while the discussions were not considered as being concluded, positive results could be expected in the end.

#### *Seat of the International Sea-Bed Authority— paragraph 3 of article 156*

25. The Jamaican delegation raised this question in relation to the second revision of the negotiating text. It was supported by some delegates that no revision could be made on an issue over which there had been no negotiations and the resolution of which did not command substantial support and other conditions contained in A/CONF.62/62.<sup>15</sup> The delegations of Fiji and Malta held the view that the question was to be dealt with in plenary conference on the basis of a resolution already tabled. They were also supported by some delegations in the view that this was a matter for the plenary conference and not the First Committee.

26. I must report that there was obviously no basis for me to conclude that there was widespread support in the First Committee for any change in format regarding this issue. As a resolution has now been tabled before this forum (A/CONF.62/L.48/Rev.1), the Plenary will have to determine whether it is to pass judgement on the substantive issue at this time following the prescribed procedures. The revised negotiating text remains an informal document to which no formal amendments can be made. The plenary conference may wish to determine the appropriate course of action.

27. As Chairman of the First Committee I feel that we have made significant progress in many areas. This, however, does not mean that the solutions proposed are completely satisfactory to all parties concerned, nor does it mean that great efforts are no longer required at the summer session at Geneva. There exists a political will, it seems to me, that we should produce a mini-package on the matters assigned to this Committee. The reports of the co-ordinators clearly suggest that such a package has already emerged and that all the essential elements are already complete. What we need is to improve and to refine these elements.

28. The formal discussions in the First Committee and the informal consultations leave me satisfied that a second revision of the negotiating text, on issues falling within our mandate, based on suggestions made, would present a better basis for further negotiations. More intensive work must be done on the areas I have enumerated in order to achieve greater success. We cannot, even indirectly, tarry or neglect the invitation that success gives us at a time when we need it most.

<sup>15</sup>*Ibid.*, vol. X.

### DOCUMENT A/CONF.62/L.55\*

#### Report of the President on the work of the informal plenary meeting of the Conference on the question of the preparatory commission

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1. At the commencement of the ninth session the President circulated a note in document PC/1 of 3 March 1980 (annex I) outlining the principal aspects of a proposal for a preparatory commission and setting forth alternative approaches which could be followed. The informal plenary Conference thereafter took up the question of a preparatory commission which would make arrangements for the establishment of the International Sea-Bed Authority. At the outset, it was decided that a separate and full discussion of this item should be carried out in the informal plenary Conference on the basis of the note. It may be noted that the question had been referred to at the resumed eighth session when the informal plenary Conference was considering the question of entry into force of the convention.

At that time, the informal paper FC/8 had been prepared by the secretariat giving all relevant precedents for preparatory commissions in United Nations practice.

2. After the initial consideration of the subject, at three meetings of the informal plenary, the President was called upon to prepare a draft text. The informal proposal of the President for a draft resolution on a preparatory commission was presented in document PC/2 of 14 March 1980 (annex II).

3. There had been a general agreement that the preparatory commission should be established and that this could be

\*Incorporating document A/CONF.62/L.55/Corr.1 of 8 July 1980.