

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/L.56

Report of the Chairman of the Drafting 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)*

rules, regulations and procedures as referred to in paragraph 5 above and any other draft rules, regulations and procedures as it deems essential for the commencement of operations by the Authority. Such draft rules, regulations and procedures shall be transmitted to the Authority with the report.

10. The Commission shall be convened as soon as possible after the lapse of 60 days since the opening of the Convention for signature, provided that not less than 50 States have signed, ratified, acceded to or otherwise accepted the Convention, failing which, it shall be convened as soon as possible after 30 days have elapsed since the receipt of the fiftieth signature to the Convention, instrument of ratification, accession or acceptance. The Commission shall meet as often as necessary, and determine its own place of meeting.

11. The Commission shall remain in existence until the Convention enters into force and thereafter until the Assembly and Council have convened, unless the Assembly otherwise decides.

12. The expenses of the Preparatory Commission shall be met by a loan provided by the United Nations and, for this purpose, the Preparatory Commission shall make the necessary arrangements with the appropriate authorities of the United Nations, including arrangements for the repayment of the loan by the Authority.

13. The Secretary-General of the United Nations shall provide secretariat services to the Preparatory Commission.

14. The States represented at this Conference agree that this resolution shall have effect as from the date of its adoption.

DOCUMENT A/CONF.62/L.56*

Report of the Chairman of the Drafting Committee

[Original: English]
[3 April 1980]

1. It will be recalled that, at the seventh session, the Drafting Committee was requested to begin work by addressing itself to the various provisions of the informal composite negotiating text and to ensure uniformity of terminology by recommending changes that were considered necessary from a technical and drafting point of view.

2. As I have mentioned on previous occasions, at the request of the Drafting Committee, the secretariat prepared lists of recurring words and expressions in the negotiating text which might be harmonized. These were embodied in two documents (Informal Paper 2 and Add.1).

3. The preliminary studies of the issues were carried out in the language groups of the Drafting Committee. On the basis of the work of these groups, the co-ordinators made certain recommendations. At the eighth session of the Conference the Drafting Committee approved these recommendations at its 19th informal meeting. The recommendations of the Drafting Committee now appear in my report to the Conference at the end of the eighth session in New York (A/CONF.62/L.40).¹⁶ I trust that these recommendations will be incorporated in any new revision of the text.

4. There is yet another list of recurring words and expressions contained in Informal Paper 2/Add.1 to be dealt with by the Committee. The language groups have submitted reports on this paper. At this session the co-ordinators of the language groups have focused their attention on this report. There have already been five meetings of the co-ordinators on these reports. It must be pointed out here that the paper referred to above has thrown into clear relief the difficulty of the task which lies ahead for the Drafting Committee.

5. There were approximately 28 meetings of the language groups. These groups, which have greatly facilitated the work of the Drafting Committee, have been engaged in improving the translations of the text, correcting mistranslations and omissions. I cannot over-emphasize the importance of their work. At great personal cost to all members of these language groups, they continue to labour in difficult circumstances on behalf of the Conference as a whole. The great credit which is due them is due in even greater measure to the co-ordinators of the English, French, Spanish, Arabic, Russian and Chinese language groups.

6. The Committee was pleased to hear that work on the computerization of the text has already begun. A computerized text will be of immense value to the Committee. In the first place, it will enable the Committee to do a more accurate analysis of the text thus ensuring correct and uniform usage of the terminology and phrases throughout the negotiating text. In the second place, once the text is in computer readable form,

editorial or substantive codification can be made readily and uniformly to the text. It will also help in subsequent publications of the text. The secretariat has started with the English text and it is the intention of the secretariat to have the text computerized, to the extent possible, in the other authentic languages of the convention.

7. The future tasks of the Drafting Committee fall into two parts. In the first place, the work of the Drafting Committee on the other list of recurring words and expressions contained in Informal Paper 2/Add.1 is as yet unfinished. At this session the co-ordinators have not been able to complete their recommendations on this paper due to competing meetings devoted to substantive negotiations which have had the dual effects of requiring the language co-ordinators to give their time to competing commitments while at the same time making it very difficult to obtain conference rooms and interpretation facilities when the co-ordinators are free to meet. In the second place, a preliminary article-by-article review of the negotiating text, the normal and more formal work of any drafting committee in any law-making conference, still remains to be carried out by the Committee.

8. One of the major difficulties arises out of hurried drafting during the closing hours of lengthy and intensive negotiations. Another arises out of the many translation errors in all languages, making the work of the language groups other than English extremely difficult. Another one of the factors which has rendered the work of the Drafting Committee extremely complex arises from the fact that the provisions of the convention emanate from various sources. They come from various sources, for instance, first, important conventions, such as the Geneva conventions on the law of the sea of 1958, the Convention on the Dumping of Wastes at Sea, of 1978, the International Convention for the Prevention of Pollution from Ships, of 1973, among others; secondly, provisions which have been the object of lengthy, difficult and delicate negotiations and which now reflect a certain delicate balance; and, thirdly, provisions which have been formulated by technical experts who are not necessarily lawyers, such as hydrographers, geologists or economists, or by lawyers on technical subjects without the participation of such experts.

9. With texts coming from such disparate sources it is quite clear that the provisions of the convention as they now stand reflect a wide diversity in use of language and particularly in terminology, with the same words and phrases used in some cases with different meanings, while in other cases widely differing terms are used with the intent of conveying the same meaning. The cumulative effect is that the interpretation of the

¹⁶*Ibid.*, vol. XII.

*Incorporating document A/CONF.62/L.56/Corr.1 of 14 April 1980.

convention is in some instances virtually impossible, a serious problem which will naturally affect its enforceability.

10. States would find it difficult to translate into national legislation a convention which could be the subject of many conflicting or even single unintended interpretations. As we have seen in our own study of the recurring expressions, an important concept is rendered in more than one way. For example, is there a difference between the expressions "obligation" and "duty"? Should the convention have at least some uniform way to express the concept that the State has a "right"? At the present time, the convention uses the following expressions "is entitled", "has the right", "shall (plus verb)", etc.

11. There are so many instances of ambiguities or contradictions in the text with the consequence that a State or Tribunal faced with its interpretation might come to a conclusion contrary to what was originally intended by the Conference.

12. A classic example of ambiguities in the text is the use of the word "facilities" in some articles to mean "objects" and in other articles to mean "services", while in one instance the word is used twice with no clear indication as to which meaning is intended.

13. This plethora of expressions will inevitably create problems for those who would interpret and draft national legislation in order to enforce the convention. Thus even the seemingly technical task of achieving uniformity is far from easy, as the recent series of meetings of the co-ordinators have shown. In many cases, not surprisingly, it is necessary to consult with committee chairmen in order to avoid drafting changes with substantive implications.

14. As an indication of the nature and extent of the problems already given preliminary consideration by the Drafting Committee, I am attaching a copy of my letter dated 26 March 1980, to the President of the conference and to all committee and negotiating group chairmen, (annex A) to which is annexed: a summary of the agreed recommendations of the Drafting Committee on work done to date (annex B), and a list of problem areas requiring consultation with the President or chairmen (annex C). A glance at these documents is sufficient to derive an appreciation of the nature, extent, complexity and sheer immensity of the task facing the Drafting Committee. As to the importance of its work, it could mean the difference between an enforceable or an unenforceable convention, or between a convention which settles disputes or creates them. It is precisely because the convention embodies so much new law that the convention requires a much greater degree of precision than it now reflects. To achieve this end the Drafting Committee must discharge a very heavy workload in a very short space of time. Obviously, any work of an informal nature which can be done before we have a final or formal text will lessen the pressure and the time required once we do have such a text.

15. It should be noted that the time-table of the Conference as embodied in document A/CONF.62/88¹ envisages the adoption of the convention before the end of the fifth week of the resumed Geneva session. It is imperative therefore that the Drafting Committee be provided with adequate time to carry out the immense task before it in order that the programme of the Conference as incorporated in document A/CONF.62/88 could be achieved.

16. To this end, I propose the scheduling of an intersessional meeting of three weeks of the Drafting Committee and its subsidiary organs during the month of June in New York (an alternative, which does not appear to command such widespread support would be for the Drafting Committee to meet at Geneva for two weeks immediately prior to the Geneva session). In reference to its subsidiary organs I refer in particular

to the language groups. In other words, members of the language groups who are not members of the Drafting Committee should also be available to continue to participate in the work of the Drafting Committee in accordance with our informal but well established procedures. The main object of this intersessional would be to complete the work of harmonization of words and expressions in the text.

17. The tentative programme would be as follows: a total of three weeks for meetings of the co-ordinators on harmonization, to be followed by meetings of the Drafting Committee and language groups to deal firstly with harmonization and then to begin, if possible, a preliminary and informal textual review of the revised negotiating text.

18. Such a programme would, of course, require the approval of the plenary, which I hereby request.

ANNEX A

Letter dated 26 March 1980 from the Chairman of the Drafting Committee addressed to the President of the Conference and to the Chairmen of committees and negotiating groups

You will recall that in my report to the plenary Conference as Chairman of the Drafting Committee, I submitted on 30 August 1979 a series of recommendations of the Drafting Committee. These recommendations appear in document A/CONF.62/L.40.

I am now attaching two further documents. The first document contains the modifications to the informal composite negotiating text resulting from the recommendations of the Drafting Committee to the plenary Conference. I would ask you to attempt to incorporate these recommendations in any proposed revision of the negotiating text in so far as it relates to the work of your Committee.

I am also attaching another document which lists issues upon which consultations with the relevant chairmen have been considered necessary and on which I have been requested to carry out such consultations. I would ask that you should let me know, as soon as possible, a convenient time and place where we can discuss these issues.

(Signed) Mr. J. A. BEESLEY
Chairman of the Drafting Committee

ANNEX B

Modifications resulting from recommendations contained in document A/CONF.62/L.40

I

"All States"

Change "States" to "all States" in the following:

article 238
article 256
article 257

II

(i) "Developing country"

(ii) "Developing State"

Change "developing country" to "developing State" in the following:

article 61, paragraph 3
article 62, paragraph 3
article 82, paragraph 3
article 82, paragraph 4
article 119, paragraph 1(a)
article 143, paragraph 3(b)
article 144, paragraph 1(b)
article 144, paragraph 2(a)
article 144, paragraph 2(b)
article 148
article 150
article 150 (c)
article 150 (g)
article 151, paragraph 4
article 152, paragraph 2
article 155, paragraph 1
article 155, paragraph 3
article 160, paragraph 2(k)
article 161, paragraph 1(c)
article 161, paragraph 1(d)
article 161, paragraph 2(b)

¹*Ibid.*, vol. X.

article 164, paragraph 2(b)
 article 164, paragraph 2(d)
 article 173, paragraph 2(c)
 Annex II, article 5, paragraph 1(e)
 Annex II, article 8, paragraph 1
 Annex II, article 8, paragraph 3
 Annex II, article 12, paragraph 1(d)
 Annex II, article 14
 Annex II, article 16, paragraph 1(b)(xi)
 Annex III, article 11, paragraph 3(b)(ii)
 Annex III, article 11, paragraph 3(c)
 Annex III, article 12, article 4(d)

V

"Persons"

Change "persons" to "natural or juridical persons" in the following:

article 137, paragraph 1
 article 137, paragraph 3
 article 139, paragraph 1
 article 153, paragraph 2(b)

VII

"Joint ventures"

Delete the word "collaboration" in article 72, paragraph 1.

XI and XIII

"Status of artificial islands, installations and structures"

"Delimitation of the territorial sea, the exclusive economic zone or the continental shelf"

The relevant parts of paragraph 8 of article 60, paragraph 2 (e) of article 147 and 259 should read as follows: "... and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf".

XII

"Sea lanes"

Add the word "such" to article 53 paragraph 5.

XIV

(i) "States with opposite or adjacent coasts"

(ii) "Adjacent or opposite States"

Change to "States with opposite or adjacent coasts" in

article 74, Title
 article 74, paragraph 1
 article 76, paragraph 9
 article 83, Title
 article 83, paragraph 1
 article 134, paragraph 4
 article 298, paragraph 1(a)

XVI

"Notification"

Change "advise" to "notify" in article 27, paragraph 3.

XVII

"Exploration and exploitation of the resources of the Area"

(i) Change to "activities in the Area" in the following:

article 150 (f)
 article 209, paragraph 1
 article 209, paragraph 2
 article 215
 article 273
 article 274
 annex II, article 10, paragraph 1
 annex II, article 12, paragraphs 1 and 6
 annex II, article 6, paragraph 2

(ii) Delete article 133 (a).

XIX

"Transfer of technology"

Add "marine" to the following:

article 276, paragraph 1
 article 277 (g)

XXI

(i) "Protection and preservation of the marine environment"

(ii) *The preservation of the marine environment*

Change to "protection and preservation of the marine environment" in the following:

article 21, paragraph 1 (f)
 article 56, paragraph 1 (b) (iii)
 article 123 (b)
 article 226, paragraph 1
 article 234
 article 266, paragraph 2
 annex II, article 2, paragraph 1 (b)
 annex II, article 13, paragraph 2
 annex II, article 16, paragraph 1 (a) (xii)
 annex II, article 16, paragraph 2 (f)

XXII

"Subregional, regional and global organizations"

Add the word "relevant" to article 61, paragraph 5.

XXIII

"Bilateral, subregional or regional agreements"

Change to "bilateral and multilateral agreements" in the following:

article 243
 article 255

XXV

(i) "Juridical status"

(ii) "Legal status"

Change "juridical status" to "legal status" in the following:

article 2, title
 article 34, title
 article 49, title

XXVI

"Other rules of international law"

Delete the word "pertinent" in the following:

article 58, paragraph 2
 article 138

Delete the word "applicable" in the following:

article 139, paragraph 1
 article 223

Change the word "principles" to "rules" in article 139, paragraph 1

XXVII

"The Charter of the United Nations"

Change article 138 to read "the provisions of this Part, the principles embodied in the Charter of the United Nations and other rules of international law..."

ANNEX C

Items requiring consultation

1. Articles 69 and 70 use the phrase "States with special geographical characteristics" whereas articles 148, 160, 161, 254, 266 and 272 use the phrase "geographically disadvantaged States". The Drafting Committee recommended that the Chairman of the Drafting Committee should consult the relevant Chairmen on the question of the harmonization of the use of these terms (see A/CONF.62/L.40).

2. The suggestion of the co-ordinators of the language groups that in article 15 the phrase "is entitled" should be replaced by "has the right" is to be referred to the Chairman of negotiating group 7.

3. Articles 259, 260 and 261 deal with scientific research installations. These articles are repetitions of matters dealt with in articles 60 and 147. They might therefore be deleted and, in their place, a reference could be made to the relevant paragraphs of article 60. The co-ordinators of the language groups recommended that this be brought to the attention of the chairmen of the relevant committees.

4. Article 240 (c) reads:

"Such activities shall not unjustifiably interfere with other legitimate uses of the sea compatible with this Convention and shall be duly respected in the course of such uses."

It is recommended that the Chairman of the Drafting Committee should consult the Chairman of the Third Committee as to possible harmonization of article 240 (c) with other articles in the convention which deal with accommodation of uses and which use the phrases "due regard" or "reasonable regard" (i.e. articles 56 paragraph 2, 58 paragraph 3, 78 paragraph 2, 87 paragraph 2, and 147). In connexion with these articles, the co-ordinators of the language groups have recommended that the phrase "have due regard" should replace "pay due regard".

5. The co-ordinators of the language groups recommended that the

Chairman of the Drafting Committee draw the attention of the Chairmen of the Second and Third Committees to the fact that article 73, on fisheries enforcement, does not contain any provision requiring clear marking of enforcement vessels, such as that which appears in articles 107, 111 paragraph 5, and 224.

6. With respect to article 101, the co-ordinators of the language groups suggested that the reference to "subparagraphs (a) and (b)" should be changed to "subparagraphs (a) or (b)" to correspond with article 15 paragraph 3 of the 1958 Geneva Convention on the High Seas. It was recommended that this suggestion should be referred to the Chairman of the Second Committee.

7. Paragraph 1 of article 58 uses the phrase "other internationally lawful uses of the sea". It is recommended that the Chairman of the Drafting Committee consult with the Chairmen of the committees as to the possibility of redrafting paragraph 4 of article 194 ("activities in pursuance of the rights and duties of other States exercised in conformity with this Convention") and article 240 (c) ("other legitimate uses of the sea") in order to harmonize them with paragraph 1 of article 58. It is also recommended that the Chairman of the Drafting Committee should consult the Chairmen of the committees as to the harmonizing of paragraph 3 of article 155 ("various forms of activities in the Area and in the marine environment") with article 147 ("activities in the Area . . . other activities in the marine environment").

8. It is recommended that the Chairman of the Drafting Committee should consult the Chairman of the First Committee to determine firstly whether the term "ocean floor" in paragraph (c) (iii) of article 133 could be changed to "subsoil" to accord with usage in other portions of the convention; and secondly regarding the desirability of changing paragraph 1 of article 1 to read "sea-bed and subsoil", rather than "sea-bed and ocean floor and subsoil", in view of the language used in other articles of the Convention.

It is also recommended that the Chairman of the Drafting Committee should consult the chairmen of the relevant committees regarding the general relationship between paragraph 1 of article 1, and articles 57, 76 and 134.

9. It is recommended that the use of the words "flag" and "registry" in connexion with objects other than vessels in paragraph 2 of article 209, and its effect on the scope of application of that article, be brought to the attention of the Chairman of the Third Committee.

10. There is a preference for the consistent use of the expression "marine scientific research" in Part XIII, except where it would be unnecessary and stylistically cumbersome (e.g. where the phrase "the research project" is clearly a cross reference to a marine scientific project). This preference was subject to consultation with the Chairman of the Third Committee.

DOCUMENT A/CONF.62/WS/1

Statement by the delegation of Paraguay dated 2 April 1980

[Original: Spanish]
[10 April 1980]

1. The delegation of Paraguay to the Third United Nations Conference on the Law of the Sea wishes first of all to express its appreciation to the President and the other members of the General Committee for the efficient manner in which they have directed the work of the Conference.

2. It is making this statement to show its concern about certain developments which have marked the work of this Conference.

3. The delegation of Paraguay sees these developments as a further step in the process—which is still only a possibility—of appropriation of the sea by certain States. The stages in that process—which has continued throughout the entire Conference—have been the extension of the territorial sea, the establishment of new standards for its measurement, the establishment of a contiguous zone, the establishment of a so-called exclusive economic zone of 200 miles, the exclusive exploitation of the continental shelf beyond 200 miles and the granting of an economic zone and rights over its continental shelf to archipelagos of coastal States. If this tendency is not curbed in some way, what will become of the much-talked-about common heritage of mankind? Paraguay, which is a land-locked country, has had no part in that process—which has developed both within and outside the Conference—and its delegation has observed it with some perplexity and without approval.

4. The delegation of Paraguay also feels that these developments reflect a dangerous loss of confidence by some States in any effort at joint management of those resources of mankind which are not yet under their own sovereignty, since—as would be the result in our case—the intention is to restrict action by the international community as a whole to the point of robbing it of virtually all practical content.

5. The delegation of Paraguay believes that this sets a bad precedent. Will we do the same with the remaining resources of the universe that are not yet within man's reach?

6. This indicates, in addition, that the Conference has been made to serve the purposes of certain States, even though it was convened—let us not forget—for the benefit of all mankind and not to satisfy selfish interests. It lessens the credibility of this great undertaking by the international community and of the

organization which sponsored it, calling even its usefulness into question.

7. The delegation of Paraguay feels that the Conference must redouble its efforts to defend the integrity of the principle that was its motive force—the defence of the high seas as the common heritage of mankind, as enunciated in General Assembly resolution 2749 (XXV)—and not the legalized appropriation of the wealth of the seas by a very few.

8. Careful study of the various articles of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1) leads to this disappointing conclusion: not much will be allocated to the common heritage, which, paradoxically, is being seriously diminished in relation to the potential wealth of the sea as a result of this Conference, whose objective had been to enhance and protect it.

9. In an effort to have the Conference strike a more equitable balance in apportioning resources between certain coastal States and the common heritage of mankind, a group of delegations has acted in an enlightened manner by introducing, in a series of amendments to articles 56 and 82 of the revised informal composite negotiating text, a proposal to establish a common heritage fund for the benefit of mankind—supplementing the meagre sea-bed resources currently exploitable—which would be financed with part of the proceeds from the exploitation of both the continental shelf beyond 200 miles and the so-called exclusive economic zones of the most advantaged coastal States.

10. The delegation of Paraguay, believing that this proposal meets the requirements of the most elementary justice, supports it without reservation. In taking this position, the delegation of Paraguay is not actuated solely by its own interest, since it will be able to derive very little benefit from such a fund, which, according to its proponents, will be used primarily to further the development of land-locked States and of the least advantaged coastal States.

11. The delegation of Paraguay also notes with concern that, at this stage of the work, discussion of the proposal has not received the attention it deserves and that there is merely a veiled reference to the matter in the report of the Chairman of the Second Committee (A/CONF.62/L.51).