

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

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## **50<sup>th</sup> meeting of the First Committee**

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# FIRST COMMITTEE

## 50th meeting

Thursday, 19 March 1981, at 11.05 a.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon)

### Preparatory Commission

1. The CHAIRMAN observed that the Conference was on the last stage of its long and tedious journey towards the preparation of a universal treaty on ocean space. The response of the members of the First Committee to the challenge of harmonizing seemingly irreconcilable national interests would undoubtedly be recorded by historians as a great legal and political milestone. The Conference must continue to be inspired by the determination to complete its work before the end of the year because the international community was impatiently waiting for a universal treaty that would be an instrument for lasting international peace and security. Momentary difficulties should not weaken the resolve, patience and sense of priority which the Conference had acquired over nine eventful sessions.

2. He urged members of the Committee, in the stock-taking process which they were about to begin, to bear in mind that the great ideal of peace in the oceans had impelled the nations of the world to make great sacrifices in human and financial resources during the preceding decade and a half. They should also remember that the ocean was man's last frontier, perhaps his last hope for survival. The international community had declared the area and resources of the deep sea-bed to be the common heritage of mankind as a whole, and the Conference had been guided throughout by the lofty aim of enabling all nations to derive such benefit from access to the Area and its resources as would promote healthy growth for each. It had been on that basis that provision had been made for guaranteed access to resources for the industrially strong and for ensuring that no undue hardship would result for the fragile economies of existing producers of the same minerals that would be extracted from the oceans.

3. There could be no denying that so far greater account had been taken of the needs and interests of the industrialized countries than of those of the weaker developed and developing countries. Future generations would judge whether the Conference's decisions in that respect had been justified and would likewise judge whether the two super Powers of the day had exemplified the leadership provided by their great revolutionary founders. Their founders had called for freedom, recognizing that there could be no freedom while a people or a generation languished in poverty and economic underdevelopment.

4. Recent history had shown that the new world of the Americas represented a break with an unjust and unequal past. History also taught that the path of isolation was fraught with danger. All were condemned to live together in history's planned interdependence. He accordingly appealed to all interest groups and all nations to do their utmost to harmonize

conflicting positions with regard to the small number of outstanding issues within the First Committee's mandate.

5. The officers of the First Committee had considered the programme of work for the session, and he intended to have further consultations with delegations on a pragmatic approach to the matter, taking into account the prevailing political winds. The issues that still had to be dealt with included the critical problems facing land-based producers regarding production limitation. It was his intention to stimulate dialogue among interested delegations on those issues with a view to reaching a consensus on the major aspects, and he was encouraged by the reactions so far.

6. The programme of work for the current session (A/CONF.62/110) provided for the First Committee to hold a general discussion on the Preparatory Commission. There was, of course, a very close relationship between that question and the provisions of Part XI. At a later stage, the question would be considered at joint meetings of the plenary Conference and the First Committee.

7. In discussing the Preparatory Commission, it should be remembered that the Conference was negotiating interim arrangements, the fundamental objective of which was to facilitate the entry into force of the convention at an early date. The opinion of the former President had been that an effective Preparatory Commission could be an incentive to ratification, but other alternatives which might fulfil that fundamental objective should not be ruled out. If the Committee concluded that the Preparatory Commission was the best alternative, its foremost task would be to ensure that the Commission was effective and was not burdened with functions which properly belonged to either the Conference or the Authority. It was also imperative that the Preparatory Commission should complete its work expeditiously and that there should be no attempt to prolong its life unduly. With regard to the functions of the Preparatory Commission, the utmost care should be taken to ensure that the results of its work conformed strictly to the provisions of the convention and in no way upset the delicate balance of interests and concerns struck in the text of the convention.

8. In discussing specific issues relating to the Preparatory Commission, the Committee should be guided by the President's report on the work of the informal plenary meetings of the Conference concerning the Preparatory Commission (A/CONF.62/L.55).<sup>1</sup> As suggested in that report, a distinction could usefully be drawn between the usual preparatory functions and the special functions arising from the convention

<sup>1</sup> *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XIII (United Nations publication, Sales No. E.81.V.5).

which the Commission would be called upon to perform. Most of its work would be highly technical, but there might be an interplay between technical and policy aspects, and the Committee should insist that the policy aspects conformed to the spirit of the convention itself. It might be necessary to identify a subgroup of functions the early completion of which might have a particular bearing on the early ratification of the convention. In addition, the Committee should discuss the status to be given to the draft rules, regulations and procedures or criteria prepared by the Preparatory Commission, and the other matters referred to in paragraph 4 of the report of the President. Members might wish to comment on whether the Committee should deal with the question of the Preparatory Commission on a subject-by-subject or paragraph-by-paragraph basis, and on the role of the working group of 21 in the future work of the Committee.

9. Mr. de SOTO (Peru), speaking on behalf of the Group of 77, welcomed the President's recommendation that the First Committee should hold a general discussion of the question of the Preparatory Commission, given the obvious connexion between that question and Part XI of the convention. As the Commission would be dealing with institutions which had been the subject of negotiations in the First Committee, it was only logical for the latter to consider the Commission from its own standpoint. The Group of 77 considered that membership of the Commission should be limited to States which had signed the convention. States which had signed the final act might be allowed to participate as observers without the right to take part in the decision-making process. It was important to avoid giving the impression that the Preparatory Commission was simply an extension of the Conference and to resist the temptation to pass on to the Commission any of the outstanding issues.

10. The main function of the Commission would be to lay the groundwork for the establishment of the Authority and its organs. It should therefore have the power to prepare draft rules, regulations and procedures in accordance with annex III of the draft convention, but the draft instruments produced by it should be of a purely recommendatory nature; that was what was meant by the foot-note to article 308, paragraph 4, in the draft convention. To vest the Commission with broader powers might benefit certain special interests but it would not promote the early entry into force of the convention or the establishment of the Authority.

11. Turning to the draft resolution set out in annex II of document A/CONF.62/L.55, he said that the Group of 77 considered that the Commission should be given a role in preparing for the establishment both of the Authority and its organs and of the Enterprise.

12. Mr. YARMOLOUK (Union of Soviet Socialist Republics) said that the report of the President and the draft resolution proposed in annex II provided a good basis for the Committee's work on the question. It was his delegation's understanding that the question of establishing a Preparatory Commission had been settled during the first half of the ninth session; all that remained was for the Conference to settle matters of detail and the issues that were outstanding. The main task of the Commission would be to make arrangements for the establishment of the Authority, but it would also be responsible for preparing for the convening of the Law of the Sea Tribunal. His delegation would not object to the Commission's preparing recommendations for the convening of the Tribunal.

13. His delegation agreed with the representative of Peru that only representatives of the States which had signed and ratified the convention should be members of the Commission. The provisions of the draft resolution were on the whole acceptable. It was essential that the functions of the Commission should be limited to making recommendations. Moreover, paragraph 3 of the draft resolution should specify that

the Commission should make its decisions by consensus; that was particularly important in view of the fact that its recommendations were to provide the basis for decisions of the Authority on such matters as its structure and the rules, regulations and procedures governing exploration.

14. Mr. WOOD (United Kingdom) said that he agreed with the view of the Group of 77 that it was appropriate for the Committee to consider the question of the Preparatory Commission. The sole purpose of the Preparatory Commission was to prepare for the implementation of those provisions of the draft convention which had been prepared in the First Committee, namely the system for the exploration and exploitation of the resources of the Area. The treatment to be accorded to preparatory investments made before the convention came into force was a closely related issue, and to some extent the comments made on the subject of the Preparatory Commission were subject to the results of further work on that item.

15. His delegation believed that the draft resolution in annex II of document A/CONF.62/L.55 was the result of a thorough discussion of relevant precedents and fully took into account the special features of the International Sea-Bed Authority; it was therefore a satisfactory basis for the Committee's work. His delegation hoped that the Committee would be able to approve the proposal, referred to in paragraph 3 of document A/CONF.62/L.55, for the Preparatory Commission to be established by means of a resolution of the Conference. It went without saying that the resolution should be one which everyone could support. The draft resolution in annex II of document A/CONF.62/L.55 had the merit of avoiding the inclusion of unnecessary elements which might prove contentious. The essential thing was that the Commission should be efficient and workable, and the practical arrangements for financing and other matters envisaged in the draft resolution were well suited to achieving that goal.

16. The provisions concerning the composition of the Commission in the draft resolution required further consideration; in favour of the view that membership should be open to States which had signed the final act it could be said that preparatory measures for the establishment of a world-wide organization should be approved on as broad a basis as possible and such an arrangement would overcome the problem of a changing membership. His delegation favoured broad participation in the work of the Commission. Reference had been made to provisions in the draft convention concerning rules, regulations and procedures drafted by the Commission; his delegation felt that those provisions should be maintained, since they were an essential element in a generally acceptable package for deep-sea mining.

17. There had been some discussion of whether provision should be made for an executive organ of the Commission; his delegation supported the idea embodied in the draft resolution that the matter should be decided upon by the Commission itself, since that was the most flexible approach. As to the procedure for taking decisions in the Commission, paragraph 3 of the draft resolution might not be entirely satisfactory because it made only a vague reference to the rules of procedure of the Conference. It was clear that the decisions of the Preparatory Commission should command general support, and his delegation agreed with the delegation of the Soviet Union that the Committee would have to decide whether the draft resolution should expressly refer to the principle of consensus as a basis for decision-making on questions of substance.

18. Mr. OUYANG Chuping (China) said that the Informal Plenary had already taken some decisions on the question of the Preparatory Commission. It was clear that the question should also be discussed by the First Committee. His delegation also agreed that at a later stage the Commission should meet under the co-chairmanship of the President of the Conference and the Chairman of the Committee. The views that had been expressed at the informal plenary, as reported in

document A/CONF.62/L.55, indicated that many of the proposals discussed had been generally acceptable. Annex I to that document listed nine questions, all of which needed detailed consideration by the Committee. His delegation believed that when discussing the functions of the Commission, the Committee must not lose sight of the purpose of the Commission, which was to prepare for the establishment of the international sea-bed Authority and the convening of the Assembly and Council. It was not, therefore, an interim substitute for the international sea-bed Authority and could not have the same powers. His delegation would submit its detailed views on the question at a later stage.

19. Mr. RAOELINA (Madagascar) said that in view of the fact that the Committee was to discuss the Preparatory Commission's objectives, one of which would be to make arrangements for the establishment of the Council of the Authority, he felt bound to draw attention to an error in the French text of article 161 of the draft convention, on the composition of the Council. Paragraph 1 (d) omitted the reference to States which were potential producers of minerals, and that omission should be rectified.

20. Mr. PASTOR RIDRUEJO (Spain) said that his delegation had already explained its general views on the subject of the Preparatory Commission. Paragraph 2 of the draft resolution (A/CONF.62/L.55), indicated that the Commission would consist of States which had signed, acceded to or otherwise accepted the convention; it had been felt that that provision would encourage States to sign the convention. His delegation, however, felt that States should also be encouraged to sign the final act and that those which had done so should also be members of the Preparatory Commission. His delegation was generally in agreement with the draft resolution, although there were some points which needed to be clarified.

21. Mr. MWANANG'ONZE (Zambia) said that his delegation was very encouraged by the Chairman's reference to issues relating to production limitations as they affected land-based producers. For countries which were unable to form consortia, that question represented a practical aspect of the convention in so far as it related to the mining of sea-bed minerals. His delegation would be interested to hear the views of other delegations on the subject in due course.

22. Mr. TSHIKALA KAKWAKA (Zaire) said that his delegation supported the idea that the Committee should proceed

quickly because it believed that all groups were in agreement on most points and that there was general agreement on the draft resolution. There were other items to be considered which were more difficult and would need more time. Consideration of the position of land-based producers was very important to developing countries producing raw materials on land and his delegation hoped that the question would be reviewed adequately by the Committee at an appropriate time.

23. Mr. USHEWOKUNZE (Zimbabwe) said that document A/CONF.62/L.55 made it clear that the establishment of the Preparatory Commission would be preceded by a satisfactory settlement of outstanding issues so that the members of the Commission could be States which had signed and ratified the convention. His delegation hoped that outstanding issues, particularly those relating to production policy, would not be left for regulation by the Commission; such matters of substance would have to be settled and provided for in the substantive provisions of the convention.

24. The CHAIRMAN said that no subject would be relegated to the background; it was the intention that all outstanding problems should be resolved because of the need for a universally acceptable convention.

25. Mr. THOMPSON-FLORES (Brazil), supported by Mr. ADIO (Nigeria), suggested that the discussion on the Preparatory Commission should be continued in the working group of 21.

26. Mr. CHARRY SAMPER (Colombia) and Mr. MUELLER (Federal Republic of Germany) said that a second formal meeting should be held so that further statements could be heard before the working group of 21 met.

27. Miss MARTIN-SANÉ (France) supported the suggestion that the Committee should hold a second formal meeting so that it could first listen to additional statements and then devote some time to a discussion of how the Committee would continue its work.

28. The CHAIRMAN said that the consensus seemed to be that the Committee should hold a second formal meeting and then consider the situation.

*The meeting rose at 12.30 p.m.*

## 51st meeting

Friday, 20 March 1981, at 10.55 a.m.

*Chairman:* Mr. P. B. ENGO (United Republic of Cameroon)

### Preparatory Commission (concluded)

1. Mr. WUENSCHÉ (German Democratic Republic) said that his delegation agreed that a Preparatory Commission should be established by means of a resolution adopted by the Conference at the time of the signing of the final act; it could, in principle, support the draft resolution contained in annex II to document A/CONF.62/L.55.<sup>1</sup> The provisions of paragraph 2 on the composition of the Commission were acceptable. It should be stated clearly in paragraph 3 that the Commission should, in principle, function on the basis of the rules of procedure of the Conference, including the gentleman's

agreement on taking decisions. It should be able to establish subsidiary committees, but that matter required more detailed consideration.

2. The function of the Preparatory Commission should be to ensure that the organs of the Authority could begin work immediately after the entry into force of the convention. His delegation could also agree to the provision for the Commission to arrange for convening the law of the sea Tribunal. Paragraph 4, which listed other tasks of the Commission, was acceptable. His delegation reserved the right to comment at a later stage on whether it should, apart from the functions traditionally assigned to preparatory commissions, also deal with other specific matters, such as those mentioned in paragraphs 5 and 8.

3. In any event, the arrangements for the Preparatory Commission should be such as to ensure maximum efficiency at

<sup>1</sup>Official Records of the Third United Nations Conference on the Law of the Sea, vol. XIII (United Nations publication, Sales No. E.81.V.5).