

Third United Nations Conference on the Law of the Sea

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149th Plenary meeting

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graph 3, on artificial installations in the exclusive economic zone.

88. Mr. McKEOWN (Australia) said he fully agreed with Mr. Aguilar's view that the task of the Second Committee was to improve and complete the draft convention and not to go into matters that had already been settled. He also supported the conclusions of the report, in particular, the comments on the support and particular attention given to a proposal and on the lack of consensus on controversial proposals.

Report of the Chairman of the Third Committee

89. Mr. YANKOV (Bulgaria) speaking as Chairman of the Third Committee presented that Committee's report. He recalled that, at the end of the ninth session, the Third Committee had completed substantive negotiations on Parts XII, XIII and XIV. The outcome of those negotiations had been incorporated into the informal text of the draft convention on the law of the sea. The agreement reached in the Third Committee had given reason to hope that a broader consensus would be achieved within the Conference itself and that had turned out to be true.

90. At the tenth session of the Conference, the Third Committee had held an informal meeting on 25 March with a view to making sure that all questions had actually been settled. The Committee had reiterated its conclusions and agreed that the draft of Parts XII, XIII and XIV was a compromise and that the balance achieved should not be destroyed by reopening debate on matters that had been settled after protracted negotiation. The Drafting Committee's recommendations did not change the substance of the text; its wording had, on the contrary, been substantially improved. Since the Drafting Committee's recommendations had been considered at informal plenary meetings of the Conference, it would be useful to issue the suggestions adopted in an official document.

91. Mr. MHLANQA (Zambia) felt that the Third Committee should take due account of the outcome of the Second Committee's negotiations with regard to the exclusive economic zone and the continental shelf and of the response that the Second Committee would be making to the concerns of land-locked and geographically disadvantaged countries in that connexion.

The meeting rose at 6.25 p.m.

149th meeting

Thursday, 16 April 1981, at 11.15 a.m.

President: Mr. T. T. B. KOH (Singapore)

Organization of the future work of the Conference

1. The PRESIDENT said that, at its 63rd meeting, the General Committee had adopted the following recommendations to the plenary Conference regarding the future programme of work of the Conference: firstly, the tenth session would be suspended on 24 April 1981 and resumed on 3 August 1981 for four weeks ending on 28 August 1981 and, if the Conference so decided, would be extended by one week to 4 September 1981; secondly, the Drafting Committee would hold an intersessional meeting of five weeks beginning on 29 June in order to complete its mandate; thirdly, in order to facilitate the attendance of experts from developing countries on First Committee matters, the Drafting Committee would take up Parts XV, XVI and XVII of the draft convention during the first three weeks and Part XI during the last two weeks. If the Drafting Committee was unable to complete its mandate, the Conference would have to make arrangements for it to work during the resumed tenth session.

2. He had held discussions on the procedure for deciding to extend the session, if necessary, and it had been agreed that such a decision would be taken in accordance with the rules of procedure. He was sure all delegations hoped that that decision could be made in accordance with the traditional practices of the Conference, that is, on the basis of consultations and consensus without resorting to voting. The programme of work of the resumed tenth session would be to complete the programme agreed on at the end of the ninth session. An attempt would also be made to find compromises on the four issues that had been outstanding at the end of the ninth session and on any other parts of the draft convention if such efforts could facilitate the early completion of the work of the Conference.

3. Last, the venue recommended by the General Committee for both the intersessional meeting of the Drafting Committee and the resumed tenth session of the Conference was Geneva.

4. Mr. ABAD SANTOS (Philippines) said that the programme of work as set forth by the President was still not clear. An important aspect of that work was to formalize the

text of the draft convention. However, the United States Government had decided to conduct a policy review and had stated that that review would not be completed before the fall of 1981. His delegation wished to know whether the programme at the resumed tenth session would include formalization of the text. Secondly, if that was the case, he wished to know whether the Conference was prepared to formalize the text without the participation of the United States. If the text could not be formalized, it would be pointless to hold a resumed tenth session. Thirdly, he wished to know whether the resumed tenth session would be the last one.

5. The PRESIDENT said that delegations themselves would have to decide whether the resumed tenth session would be the last one. The programme of work which he had previously set forth and which had been agreed on at the end of the ninth session embodied formalization of the text. The question whether delegations were prepared to proceed without the participation of the United States had been put to the Chairman of the Group of 77, who had stated that the work of the Conference could not be delayed because of one delegation. He (the President) believed that under benign pressure from the Conference the United States might be able to expedite its review, and he was sure everyone hoped that its delegation would come to the resumed tenth session prepared to set forth its definitive views.

6. Mr. TSHIKALA KAKWAKA (Zaire) asked the President to explain his remark that the resumed tenth session would seek to arrive at a compromise on questions other than the four outstanding issues. At the ninth session, his delegation and others had made inquiries about policies for production limitation and had been told that the matter had been referred to the First Committee. That Committee had dealt with the subject rather informally, and his delegation now wished to request that it should be regarded as an important issue which required solution and should be explicitly included in the programme of work of the resumed tenth session.

7. The PRESIDENT said that the question of production limitation could be raised at the 150th meeting of the Conference, which would be held that afternoon to hear the

report of the Chairman of the First Committee. With regard to the first question asked by the representative of Zaire, he recalled that at the ninth session the President had identified four outstanding problems to be solved. No solutions had yet been found, and furthermore, many delegations had made proposals in the First and Second Committees. The Conference had already heard the report of the Chairman of the Second Committee and would hear the report of the Chairman of the First Committee that afternoon. He had encouraged those Chairmen to hold consultations on other issues if such consultations would enhance the prospect for a consensus on the draft convention.

8. Mr. CALDEIRA MARQUES (Cape Verde) recalled that at the ninth session one duly accredited delegation had given its agreement that the tenth session would be the last one. However, that same delegation had now stated that it was not in a position to participate in the formalization of the text. That was the first time in the history of the Conference that a delegation had been unable to honour its commitment. Delegations had come to the tenth session in order to set the date for the signing of the convention; nevertheless, to facilitate the work of the delegation to which he had referred, others had agreed to give it time to conduct its policy review. Yet the Conference was now being told by that delegation that it would be unable to define its position before the fall of 1981. The Conference could no longer postpone formalization of the text if it was to fulfil its mandate and perform its duty to the peoples of the world. The Conference should express its wish that the delegation in question should make every effort to define its position before the resumed tenth session in August.

9. Mr. KOZYREV (Union of Soviet Socialist Republics) said that his delegation had no objection to the recommendations of the General Committee with regard to the proposed resumed tenth session and the intersessional meeting of the Drafting Committee; it could accept those recommendations on the understanding that the resumed tenth session would work in full conformity with the decision taken by the Conference at its 57th General Committee meeting, on 28 August 1980 (A/CONF.62/BUR.13/Rev.1). His delegation, like most others, continued to believe that there was a real possibility and a need to carry out that decision, that is, to complete the negotiations during 1981 and finalize and adopt the draft convention on the basis of consensus. His delegation shared the disappointment of other delegations at the failure to complete the work of the current session; the responsibility for that failure lay with one delegation which had shown itself unwilling to negotiate in good faith and had attempted to impose one-sided solutions on the Conference. Despite its professed support of the principle of continuity in long-term international negotiations, the United States delegation had called into question all of the positive results and compromise agreements achieved by the Conference with the participation of more than 150 States, including the United States. The international principle of succession was based not only on the continuity of acquired rights but also on the implementation of obligations assumed. The United States delegation not only had impeded negotiations at the current session but also had failed to make it clear whether it continued to believe in the need for an international treaty establishing international legal standards of co-operation among States with regard to the peaceful use of the oceans and their resources. The records of discussions in the United States Congress and interviews with members of Congress suggested that perhaps the United States no longer believed in the need for or the desirability of a convention on the law of the sea. The Soviet Union, on the other hand, continued to believe in the need for an international agreement establishing a just legal order on the seas. The draft of such agreement in the form of a draft convention on the law of the sea (A/CONF.62/WP.10/Rev.3/and Corr.1 and 3) was now available; it contained a broad range of international legal standards based on carefully balanced compro-

mise positions and providing a good basis for consensus. With a little work, the draft convention could be adopted and opened for signature. The signature of the convention on the law of the sea and its entry into force would constitute an important contribution by the Conference toward the development of international co-operation among States and the strengthening of peace and international security.

10. Mr. MWANANG'ONZE (Zambia) said that his delegation still did not understand the nature of the next session. That was particularly important to delegations from developing countries because the nature of the resumed tenth session would determine the size of the delegations they would send, or indeed determine whether they should send any delegations at all. While it understood the President's difficulties with regard to giving an explicit reply, his delegation would appreciate any information he could provide.

11. The PRESIDENT said that, while he could not accurately predict the future, he intended, as an officer of the Conference, to complete the programme of work that the Conference had set itself at the ninth session. Whether or not the Conference would succeed in that depended on delegations. He could not possibly complete the negotiations unless delegations were willing to negotiate. He hoped that the delegation of Zambia would consult with the Chairman of the Group of 77 on its policy, strategy and tactics for the resumed tenth session.

12. Mr. VUKAS (Yugoslavia) said that his delegation supported all the recommendations of the General Committee with regard to the resumed tenth session. He hoped that all States would act in such a way as not to impede the early adoption of the convention on the law of the sea. In order to achieve that goal, States should avoid enacting national legislation contrary to international law or undermining the compromises achieved in the Conference. States should desist from regarding some of the negotiated solutions as having achieved the status of customary law while proclaiming others outstanding or negotiable. One of the first steps towards the establishment of the new international economic order would be to accept the implementation of the concept of the Area as the common heritage of mankind and not to regard the Area as another opportunity for further developing the economies of rich States. Such an approach would eliminate obstacles that the Conference should not have to face.

13. The PRESIDENT appealed once again to delegations to limit their statements to the future programme of work of the Conference as recommended to the plenary Conference by the General Committee.

14. Mr. GÓMEZ ROBLEDO (Mexico) said that a joint communiqué had been issued by the Presidents of Venezuela and Mexico at Mexico City, outlining the policy of their two countries as follows: "Taking into account the fact that the Third United Nations Conference on the Law of the Sea has been able to negotiate a draft convention that has secured a consensus with regard to new institutions, rules and practices on such matters as the extension of the territorial sea, the establishment of the exclusive economic zone, the upholding of the principle of the common heritage of mankind, the protection of the marine environment and the regulation of scientific exploration, the two Presidents expressed the resolve of their Governments to continue co-operating, as they have done thus far, in the Conference, with a view to facilitating the conclusion of negotiations as soon as possible, so that the convention can be opened for signature at Caracas on the date scheduled."

15. Mr. TORRAS de la LUZ (Cuba) said that it was important for the Conference to hold its summer meetings. With regard to the programme of work, the Conference could not afford to leave out any of the pending issues and should do everything possible to advance the formalization of the text. He was pleased with the immediate solutions achieved. As

every delegation knew, the critical situation the Conference was facing had arisen from the attitude of the United States Government. All delegations, particularly those of the Group of 77, for which the convention was of prime importance, must work to achieve as much progress as possible at the next session at Geneva. That was the only way his delegation could respond to the irresponsible attitude adopted by the new Government of the United States. His delegation was sure that other developed countries shared its position, since the only alternative to the convention would be anarchy on the seas. Those who spoke in the press and the Senate of the United States against the production policies agreed upon in the convention would do well to note that they could not destroy achievements in that sphere of the law of the sea without adversely affecting the progress made in other spheres as well. If there was no alternative genuine production policy providing at least a minimum of protection for the interests of land-based producers, then it would also be impossible to establish an international régime of the territorial seas in straits; in that case, any country could make and implement its own decisions with respect to the use and regulation of territorial seas and traffic passing through them. Success in that sphere was needed because it was of vital interest not only to the developing countries but to all countries, since the convention would provide a régime for all the seas and, therefore, an important means for avoiding conflicts.

16. Mr. KIM CHUNG (Viet Nam) said that his delegation could accept the recommendations of the General Committee concerning the proposed resumed tenth session. It was essential, however, that the resumed tenth session should be capable of achieving the goals agreed upon at the 57th meeting of the General Committee at Geneva on 28 August 1980, namely, the completion of negotiations on all pending questions and the finalization and adoption of the draft convention. Like many others, his delegation felt concern at the element of doubt created by the attitude of the United States delegation. That delegation should assure the Conference that it would adopt an attitude of good faith and responsibility at the resumed tenth session and should make every effort to urge its Government not to impede the completion of the work of the Conference, which had already lasted much too long and was now so close to conclusion. It was in the interest of the United States, as well as of other countries, to follow the only reasonable course of co-operation with the international community in establishing a just and fair new legal order for the oceans. The United States must also realize that it was not in its best interest to undertake illegal unilateral exploitation of the common heritage of all mankind.

17. His delegation accepted the recommendations of the General Committee concerning the resumed tenth session with the understanding that that session would seek to complete the work of the Conference and adopt the draft convention, which would contribute greatly to the improvement of the international climate and would strengthen the maintenance of peace and international security in general.

18. Mr. MARINESCU (Romania) said his delegation felt, with regard to the programme of work of the proposed resumed tenth session, that the future activity of the Conference must be to seek to establish the necessary conditions for genuine and serious negotiations on all pending questions, so as to arrive at generally acceptable solutions. The programme of the resumed tenth session must therefore be guided by the requirement of arriving through joint efforts at consensus formulas for dealing with all unresolved problems. He stressed that point because it had been stated on various occasions that the only pending questions were the four problems mentioned in the draft programme submitted to the Conference at its 144th plenary meeting. Many delegations had, then and later, expressed the view that besides those four problems, there were others that needed to be considered and negotiated. In that connexion, his own delegation had

addressed a question to the President at the 144th meeting requesting clarification as to how unresolved issues other than the four mentioned in the draft programme would be dealt with. The President had at that time replied—although, unfortunately and unexplainedly, neither the Romanian question nor the President's reply had been reflected in the summary record of the meeting—that any delegation could raise whatever issues it wished in the Second and Third Committees. Some of the pending issues, in his delegation's view, were: delimitation of maritime space, access to living resources in the exclusive economic zone by geographically disadvantaged countries situated in regions or subregions lacking in such resources, innocent passage of foreign warships through the territorial seas, and certain aspects relating to the final clauses, especially reservations. With regard to the first of those issues, no compromise formula had been found, and the existing wording of article 74, paragraph 1, and article 83, paragraph 1, had been rejected because they had been introduced into the negotiating text through a violation of the rules of procedure of the Conference. With regard to innocent passage, the extensive debates in the Second Committee had clearly shown the continuing need for serious efforts on the part of all interested States in order to arrive at a generally accepted negotiated formula. It had again been stated at the 148th meeting that the programme of work approved by the Conference included only four problems, allegedly the only pending problems, which were to be examined during the future work of the Conference. His delegation emphatically rejected such an interpretation. The existence of unresolved problems was entirely independent of whether or not they were mentioned in a given draft programme. The logical conclusion was that there must be serious negotiations conducted in a truly constructive spirit and dealing with all problems in order to obtain consensus where it had not yet been reached. It was with that understanding that his delegation could agree to the adoption of the programme of work of the resumed tenth session.

19. The PRESIDENT said that the summary record of the 144th meeting would be amended to reflect the question that the delegation of Romania had raised and the answer given to it.

20. Mr. ARIAS SCHREIBER (Peru) said that his delegation agreed with the recommendations of the General Committee. It was quite clear that the decision to extend the tenth session by one week would be adopted in accordance with the rules of procedure of the Conference, since it was a procedural matter. He hoped the decision would be arrived at by consensus; otherwise some delegations might exploit the lack of consensus to exercise a veto at the Geneva meeting.

21. The PRESIDENT said that, if there was no objection, he would take it that the Conference wished to adopt the recommendations of the General Committee.

It was so decided.

22. The PRESIDENT said that if there was no objection, he would take it that the Conference wished to recommend to the General Assembly at its thirty-fifth session the adoption of a resolution authorizing the Conference and the Drafting Committee to meet.

It was so decided.

Report of the Credentials Committee

23. The PRESIDENT invited the Executive Secretary to add any further information he might have to communicate on the report contained in document A/CONF.62/113.

24. Mr. HALL (Executive Secretary) said that since the submission of the report of the Credentials Committee, credentials called for by rule 3 of the rules of procedure of the Conference had been received from El Salvador, which would be added to the list contained in paragraph 3 of the report.

25. The PRESIDENT said that if there was no objection, he would take it that the Conference wished to adopt the report of the Credentials Committee.

It was so decided.

The meeting rose at 12.15 p.m.

150th meeting

Thursday, 16 April 1981, at 4.20 p.m.

President: Mr. T. T. B. KOH (Singapore)

Report of the Chairman of the First Committee

1. Mr. ENGO (United Republic of Cameroon), speaking as Chairman of the First Committee, recalled that at the end of the resumed ninth session he had been able to report a breakthrough on the outstanding hard-core issues before the First Committee. It had been clear that the proposals which had later been incorporated in the draft convention enjoyed a consensus. The report he had submitted¹ had therefore outlined only a few issues which required attention before the First Committee could terminate its mandate.

2. It was common knowledge that, at the commencement of the current session, the United States delegation had announced its decision to review the draft convention and had insisted that the Conference should await the end of such a review before any fruitful negotiations could take place with a view to formalizing the draft. The Group of 77 had expressed the opinion that no useful negotiations could therefore be undertaken to resolve the issue of preliminary investment protection. Nevertheless, following consultations, it had appeared that it was the will of delegations to proceed with the negotiating effort on all outstanding issues, bearing in mind the effect of the reservations expressed.

3. During the current session, the First Committee had held four meetings, all formal, which had provided an opportunity for delegations to hold a general debate on the Preparatory Commission and to formulate general comments on the reports of the Secretary-General, one on potential financial implications for States parties to the future convention on the law of the sea (A/CONF.62/L.65) and the other on the effects of the production limitation formula under certain specified assumptions (A/CONF.62/L.66).

4. In addition, the First Committee had taken up for the first time the issue of the site of the Authority. He recalled that, in the course of the consultations held by President Amerasinghe, it had become clear that the issues involved were so closely related to the issues concerning Part XI that the First Committee was the most appropriate forum for negotiations. It had been agreed that the negotiations would be co-chaired by the President of the Conference and the Chairman of the First Committee, using the established system of a working group of 21, and taking as a basis for negotiation the report of President Amerasinghe on the work of the informal meetings of the plenary Conference on the question of the Preparatory Commission (A/CONF.62/L.55),² in particular the draft resolution providing interim arrangements for the international sea-bed Authority and the law of the sea Tribunal. The discussions and consultations in the working group and in the various negotiating groups of the First

Committee had resulted in the identification of major issues and of the interrelationships among them.

5. General agreement had been reached that the Preparatory Commission should be established by a resolution of the Conference included in the final act. In addition, the objective in establishing the Preparatory Commission had been broadly recognized as being to make provisional arrangements for the first session of the Assembly of the international sea-bed Authority and of its Council, including arrangements for the establishment of the secretariat and the Enterprise, as well as the convening of the international law of the sea Tribunal. He believed that "Preparatory Commission for the International Sea-Bed Authority and the International Law of the Sea Tribunal" might prove to be the most appropriate title.

6. On the issue of the membership of the Commission, the text of the former President's draft appeared to present difficulties for some of the industrialized countries, which would have preferred that it be opened to all signatories of the final act. The other delegations had insisted that only States which clearly demonstrated the intention to be bound by the convention should be members. Consequently, signature of the convention would have to be a minimum criterion, as that would also induce early commitment by States and prevent participation in the work of the Commission by those States which might have decided not to be parties to the convention. The Group of 77 appeared to be ready to accept a compromise granting observer status to States which signed only the final act, giving them power to participate fully in the deliberations of the Commission but not to participate in decision-making.

7. With respect to the broad question of decision-making and adoption of the Commission's rules of procedure, three aspects had to be considered: the rules of procedure to be applied in the Commission pending the adoption of its own rules of procedure; the majority required for the adoption of the rules of procedure; and provisions for voting on substantive issues. The exchange of views had been somewhat inconclusive, especially on the latter two aspects. It would appear that the Western industrialized countries and the socialist countries would insist on the consensus rule. The Group of 77 would favour a two-stage approach by which there would be a vote should the quest for consensus fail. It was clear that more consultations on the negotiating process would be inevitable.

8. As far as the function of the Commission was concerned, there appeared to be general agreement on the proposition that the Commission should have a broad mandate of preparing for the establishment of the International Sea-Bed Authority and the Tribunal, but the industrialized countries had considered that discussion of the issue of the establishment of the Enterprise was premature, since it had to be taken up in discussions on the preliminary investment protection proposals. The Group of 77 and other members of the working group of 21 were of the opinion that, on the contrary, it was imperative to consider the issue, given the important effect of the Enterprise on the agreed working of the parallel system.

¹ *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XIV (United Nations publication, Sales No. E.82.V.2), document A/CONF.62/C.1/L.28 and Add.1.

² *Ibid.*, vol. XIII (United Nations publication, Sales No. E.81.V.5).