

Third United Nations Conference on the Law of the Sea

1973-1982

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A/CONF.62/SR.153

153rd Plenary meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XV (Summary Records, Plenary, General Committee and First Committee, as well as Documents of the Conference, Tenth and Resumed Tenth Sessions)*

23. He was not opposed to the establishment of a time-limit but urged that it should be realistic. It was only fair to recall that, at other stages of the Conference, other committees had worked very slowly indeed without any objection being raised. The Drafting Committee still had a formidable task before it: it had dealt with 19 articles of Part XI but still had 38 substantive articles of that part to deal with, as well as the 105 articles of annexes III to VIII.

24. The work of the Drafting Committee was such that every participating representative was constantly involved in it. The Committee was engaged in an unprecedented multilingual drafting exercise. It had to make constant efforts to avoid any discrepancy between the texts in different languages and to ensure that the Conference produced a single six-language convention and not six conventions. That task demanded a great deal of patient work and called for a high level of professional skill. Although he was not adverse to the Conference pressing the Drafting Committee to speed up its work, he urged it to realize that the Drafting Committee's task was not one which could be rushed through in a few weeks. The Drafting Committee itself was working under a real sense of urgency, but was anxious to do its work well.

25. Mr. PRANDLER (Hungary), speaking on behalf of the Chairman of the group of Eastern European States, said it was clear to all participants that the proposal by his group had

been designed to induce the Drafting Committee to complete its work as quickly as possible. Following the explanations given by the President of the Conference and the Chairman of the Drafting Committee, he wished to make it clear that his group fully appreciated the competence, skill and devotion of all the members of the Drafting Committee and was very grateful for that Committee's efforts. Its intention had been to underline the importance of speeding up the work of that important body; but at the same time, it wished to express its appreciation for the valuable assistance given by the Secretariat to the Drafting Committee.

26. In the light of the explanations provided by the Chairman of the Drafting Committee, the best solution would be for his group to introduce, at the next plenary meeting of the Conference, a proposal on the subject of a time-limit for completing the work of the Drafting Committee. At the present stage, the group of Eastern European States did not press its proposal for the time-limit of 24 August 1981 and maintained only the substance of its proposal—namely, its feeling that the Drafting Committee should complete its work as soon as possible.

27. The PRESIDENT thanked the Chairman of the group of Eastern European States for his co-operation.

The meeting rose at 12.25 p.m.

153rd meeting

Monday, 24 August 1981, at 6.45 p.m.

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

Tribute to the memory of Sir Humphrey Waldock, late President of the International Court of Justice

On the proposal of the President, the representatives observed a minute of silence.

Recommendations of the General Committee

1. The PRESIDENT invited the Conference to consider the recommendations of the General Committee (A/CONF.62/114).

2. Mr. NI Zhengyu (China) said that the experiences of the past few weeks had shown that it was impossible to complete negotiations on the outstanding issues in the allotted time. There were a number of clauses in the draft convention which needed improvement, or on which consultations were still required in order to arrive at a consensus. Such provisions included the articles on innocent passage of foreign warships through the territorial sea and the reservation clauses.

3. The Drafting Committee had had a very heavy task and had found it impossible to complete its work in accordance with the original schedule at the present session. In the past three weeks, however, it had made a certain amount of progress thanks to the co-operation of many delegations; and the results of its work had been discussed by the Conference in an informal plenary meeting. The Conference had also found a solution to the problem of the site of the Authority and of the Tribunal. All the above-mentioned achievements should be taken into account and his delegation agreed that at the end of the present resumed session the informal text of the draft convention should be revised to reflect those achievements.

4. The Chinese delegation supported the recommendation of the General Committee in paragraph 2, that the revised text should now have a higher status, subject to the three conditions set forth in the concluding subparagraphs of that paragraph.

5. His delegation found the General Committee's recommendations reasonable and practical. They were themselves based on the recommendations of the Collegium, which reflected widely-held opinions within the Conference. He therefore supported the General Committee's recommendations, particularly those relating to the final decision-making session of the Conference.

6. Lastly, his delegation wished to express its gratitude to the Group of 77 for its valuable contribution to the work of the Collegium.

7. Mr. KOROMA (Sierra Leone) supported the General Committee's recommendation in paragraph 2 that the revised text of the draft convention should be elevated to a higher status; but he felt that the proposed new symbol, particularly the end portion "L.78", detracted somewhat from that higher status.

8. He also noted, from the end of the paragraph, that it would be possible to submit formal amendments after the termination of all negotiations. Did that mean that, when all consultations and negotiations had been completed, it would still be possible to submit amendments to the text now to be formalized?

9. Lastly, he expressed misgivings—which, he felt sure, were shared by numerous other small delegations—at the proposal to hold an eight-week session in New York preceded by a six-week intersessional meeting of the Drafting Committee. It would be very difficult for small delegations to participate in 14 weeks of meetings in New York.

10. The PRESIDENT said that the symbol "A/CONF.62/L.78" had been chosen on the recommendation of the Secretariat, which had suggested that it would be suitable for the revised draft when it was elevated to the status of a formal proposal. It was true that there were many other documents in the "L" series, but none of them were entitled draft convention.

11. On the second point raised by the representative of Sierra Leone, he said that, under rule 33 of the rules of procedure of the Conference, there was a clear possibility of submitting formal amendments to the draft convention. While negotiations were still in progress, however, rule 33 did not apply. By the end of the present week, the Collegium would prepare a programme of work for the next session of the Conference, which would include an estimate of the number of weeks still needed for negotiations. Rule 33 of the rules of procedure would of course apply as soon as the negotiations were completed.

12. On the last point raised by the same representative, he said that the Collegium had been fully conscious of the difficulties of small delegations when it had decided to propose an eight-week final decision-making session. On the other hand, it had felt that it would be even more burdensome for all delegations to have two sessions; and it had therefore proposed that the session in New York in the spring of 1982 should be long enough to ensure the adoption of the convention.

13. Mr. ABAD SANTOS (Philippines) said that he could support the General Committee's recommendations but he wished to know what was meant by the expression "certain outstanding issues" in paragraph 2.

14. The PRESIDENT replied that the "outstanding issues" were those referred to in documents A/CONF.62/WP.10/Rev.1¹ and A/CONF.62/BUR.13/Rev.1.

15. Mr. MAZILU (Romania) said that his delegation agreed in principle with the General Committee's recommendations, subject to the following comments.

16. His delegation had always favoured solutions which reflected the positions and interests of all States. It therefore felt that formalization of the text should be subordinated to that essential objective of the Conference and of the convention.

17. At the present time there were still a number of outstanding issues to be solved by active and patient negotiations. The Romanian delegation, like certain others, had stressed that those outstanding issues included access to the living resources of the exclusive economic zone by the geographically disadvantaged States situated in a region or subregion poor in such resources, the innocent passage of foreign warships through the territorial sea and reservations to the convention.

18. If the Conference decided to formalize the text of the draft convention as it now stood, it would be absolutely essential to continue negotiations in order to consider all outstanding issues, taking into account the interests of all States. That would necessitate the adoption of a precise programme of work for the remaining period of negotiations both before the formalization of the text and thereafter; and all outstanding issues would have to be covered in those negotiations.

19. At the same time, the Romanian delegation considered it essential that all the necessary possibilities should be provided for the formal expression of the positions of delegations regarding the new version of the text. Such possibilities should be provided during the next stage of the Conference, if they could not be ensured at the time of formalization.

20. Mr. WARIOBA (United Republic of Tanzania) said that his delegation accepted the General Committee's recommendations, but would like the President to clarify certain points.

21. His delegation's concerns were similar to those of the delegation of Sierra Leone. In the first place, he was not altogether satisfied with the explanation given with regard to the symbol proposed for the draft convention in its higher

status. He did not feel that a symbol in the "L" series would give the draft the required status.

22. With regard to the contents of paragraphs 4 and 5 of the recommendations of the General Committee, he observed that it was not the first time that the Conference would be taking a decision to the effect that its next session would be the last. His delegation would find it difficult to accept the proposed period of eight weeks for the spring 1982 session, unless it was given an assurance that the next session would indeed be the last.

23. He noted from paragraph 5 that the Collegium would be considering in the next few days the programme of work for the next session. What would happen if it were then found that an eight-week period was either too long or too short for the proposed programme? It would have seemed preferable to hold consultations on the programme prior to taking a decision on the length of the next session.

24. The PRESIDENT invited the Special Representative of the Secretary-General to explain the position with regard to the proposed symbol for the draft convention in its new status.

25. Mr. ZULETA (Special Representative of the Secretary-General) explained that, in normal United Nations practice regarding document symbols, the letter "L" prefacing the number of a document served to indicate that it was a document officially submitted to the plenary meeting of a United Nations organ. All proposals and amendments submitted to such bodies were identified by an "L" symbol, as were other documents of an official nature submitted to them. In the present instance, assignment of the proposed symbol "A/CONF.62/L.78" would confer upon the draft convention the status of an official document of the Conference.

26. The PRESIDENT said he agreed with the Tanzanian representative that it would have been more logical to consider first the programme of work in order to judge whether the eight-week period for the next session was adequate. However, owing to pressure of time, the Collegium had not been able to adopt that course. He urged delegations to trust its judgement that the final session would indeed require eight weeks. It was of course open to the Conference, once it had examined the proposed programme of work, to make any change it might consider appropriate in that respect.

27. Mr. OMAR (Libyan Arab Jamahiriya) said that his delegation would have preferred the negotiations on outstanding issues to have been completed before the draft convention was given official status. Nevertheless, in view of the situation facing the Conference, his delegation would not object to the General Committee's recommendations, particularly bearing in mind the three conditions specified in paragraph 2.

28. At the same time, his delegation wished to insist on the importance of the outstanding issues before the Conference. It was essential that delegations should, in the negotiating process, show a spirit of compromise in order to arrive at acceptable solutions. No delegation should hinder the work of the Conference in order to obtain special advantages for its own country.

29. The most important, and undoubtedly the most difficult, of the outstanding issues was the question of the delimitation of the territorial sea and other maritime areas between States with opposite or adjacent coasts. His delegation very much hoped that efforts would be made to enable the Conference to arrive at an acceptable solution of that problem.

30. Another important outstanding issue was the question of the innocent passage of warships through the territorial sea; that was a key issue for the security of coastal States. The fact that it had so far remained unsolved was a matter of serious concern to his delegation. A recent and most regrettable event, which involved acts of repeated provocation against a coastal State by another State, had increased his delegation's concern in the matter. Accordingly, he strongly urged that a satisfactory solution should be found to the problem of innocent passage of warships.

¹ *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XI (United Nations publication, Sales No. E.80.V.6).

31. Lastly, he wished to express his sympathy with the African mineral-producing countries which feared that they would suffer from unrestricted mining of the sea-bed.

32. Mr. VALENCIA-RODRÍGUEZ (Ecuador) said that the "outstanding issues" mentioned at the end of paragraph 2 were not only those identified in document A/CONF.62/BUR.13/Rev.1 but also certain other issues which, in the opinion of many delegations, were still in the process of negotiation. On that point, he therefore supported the remarks by the delegation of China and a number of other delegations.

33. His delegation had no objection to the adoption by consensus of the General Committee's recommendations, but wished to state that their adoption would not affect the position consistently taken by his delegation throughout the Conference.

34. He agreed with the Libyan representative on the need for a solution to the question of delimitation criteria. It was essential that the solution eventually found should protect the rights of all States, developed or developing and coastal or non-coastal.

35. The PRESIDENT said that the Ecuadorian representative was correct in his interpretation of document A/CONF.62/BUR.13/Rev.1 with regard to the "outstanding issues".

36. Mr. KOZYREV (Union of Soviet Socialist Republics) said that the position of the group of Eastern European States with regard to the organization of work of the Conference was well known and was generally in agreement with that of the Group of 77. His delegation had welcomed the assurances, given earlier in the session by the President of the Conference and the Chairman of the First Committee, that measures would be taken to complete negotiations on all outstanding issues at the present session of the Conference. Unfortunately, however, after three weeks of the resumed session, his delegation could not express its satisfaction with the progress made. There had been some progress on a few matters but in general the Conference was not working fruitfully or successfully. It could even be said that during the entire tenth session of the Conference not a single plenary meeting had been held in conformity with the procedures set forth in document A/CONF.62/62,² a document endorsed by the Conference by consensus and confirmed on two occasions. It was obvious that the work of the Conference was still being blocked artificially by the obstructionist activities of the United States delegation, acting purely in its own interests and against those of the majority of delegations.

37. His delegation had not favoured the establishment of the so-called group of 28, which it had regarded as an attempt to divert the Conference from its main objectives and to disregard the principle of sovereign equality and the duty of States to fulfil their obligations in good conscience. It had soon become clear that the new group was not only failing to help the Conference complete its work, but was further enabling the United States delegation to obstruct the work of the Conference, with the ultimate aim of permitting United States corporations and other imperialist multinational corporations, in the absence of an agreed convention, unilaterally to exploit the resources of the sea. Such a one-sided approach was contrary to the interests of the majority of countries, in particular the developing countries, and had been rejected by most delegations.

38. His delegation endorsed the position expressed by the Chairman of the Group of 77 with regard to United States efforts to review the compromise agreements worked out at the Conference and thus jeopardize years of work. The new

United States Administration must realize that a single Power, regardless of its strength, could no longer dictate solutions—that were exclusively in its own interest—to world problems. The Soviet delegation was convinced that all the necessary conditions existed to enable the Conference to reach its goal, as set forth in the decision of 28 August 1980 (A/CONF.62/BUR.13/Rev.1). He hoped that the United States delegation would not continue its obstructionist tactics but would in a spirit of co-operation, taking into account the interests of other countries and existing realities, make a positive contribution towards the elaboration of a major instrument of international law.

39. Mr. PINTO (Portugal) expressed his delegation's entire approval of the General Committee's recommendations, provided that the various outstanding issues were duly negotiated and settled. In that connection, he wished to know whether the question of the composition of the Council of the Authority—a question which had been raised by many countries—was still considered to be an outstanding issue.

40. The PRESIDENT replied that the answer to that point was to be found in documents A/CONF.62/WP.10/Rev.3 and Corr.1 and 3 and A/CONF.62/BUR.13/Rev.1.

41. Mr. TARCICI (Yemen) associated himself with other speakers who had stressed the importance of settling the outstanding issue of the innocent passage of warships in the territorial sea. He urged that consultations and negotiations on the subject should be pursued with a view to arriving at a formula which could be accepted by consensus.

42. Mr. CHINHENGO (Zimbabwe) stressed the great importance of the conditions—especially the first and third conditions—expressed in paragraph 2 of the General Committee's recommendations.

43. In connection with the outstanding issues, he wished to make special reference to the problems of land-based mineral-producing developing countries which would be faced with competition from minerals extracted from the sea-bed. He also emphasized the essential need to adhere both to the letter and to the spirit of document A/CONF.62/114, particularly its paragraph 2.

44. The PRESIDENT said that he could assure the representative of Zimbabwe that he would do his best to ensure that paragraph 2 of document A/CONF.62/114 was duly observed both in letter and in spirit.

45. Mr. MUDHO (Kenya) said that his delegation shared the views expressed by the representative of Tanzania and suggested that, in paragraph 4 of the recommendations, the words "from 8 March to 30 April 1982, a period of eight weeks" should be amended to read: "for approximately eight weeks during the months of March-April 1982". That wording would leave it open to the Conference to make any adjustments which might be considered necessary in the light of experience.

46. In the single sentence of paragraph 5, he proposed that the words "for its consideration and adoption" be inserted at a suitable place, to indicate clearly that the proposed programme was being submitted for consideration and adoption by the Conference.

47. Mr. KHURELBAATAR (Mongolia) said that, like the overwhelming majority of delegations, his own delegation had come to the Conference determined to participate in the final negotiation of a comprehensive convention. Unfortunately, serious difficulties had been created for the Conference as a result of the obstructionist attitude adopted by the United States delegation.

48. The Mongolian delegation's position of principle with regard to the statement made by the United States delegation on 5 August 1981 was similar to that expressed by the spokesman for the group of Eastern European States on 10 August 1981.

²Official Records of the Third United Nations Conference on the Law of the Sea, vol. X (United Nations publication, Sales No. E.79.V.4).

49. With regard to the work of the session and the final elaboration of the draft convention, his delegation supported in general terms the position taken by the Group of 77.

50. It also supported the majority view with regard to the formalization of the draft convention, since substantial agreement had already been reached on its fundamental provisions. At the same time, he could not fail to note that the interests of land-locked States were not fully reflected in the draft. Nevertheless, his delegation, which had co-operated in the work on the draft, would at the present stage of the Conference's work continue to support the agreed text.

51. His delegation—like those of the Soviet Union, Czechoslovakia and the German Democratic Republic—strongly felt that any attempt to revise the existing draft would represent a major setback for the Conference. It would be tantamount to nullifying 10 years of painstaking work at a single stroke.

52. The Conference had reached the final phase in its work. Accordingly, his delegation fully agreed with the views expressed in the letter of 20 August 1981 from the chairman of the group of Eastern European States (A/CONF.62/L.77). It also wished to stress the need for the Conference to produce at the present session not a semi-official text but an official draft convention for subsequent adoption by consensus.

53. With regard to the future work of the Conference, his delegation agreed with the remarks of the Soviet Union delegation and would continue to oppose any attempts to frustrate the work of the Conference.

54. Mr. de la GUARDIA (Argentina) supported the General Committee's recommendations with regard to the "outstanding issues" (A/CONF.62/114, para. 2). He agreed that the list of such issues in document A/CONF.62/BUR.13/Rev.1 was not exhaustive.

55. His delegation attached great importance to the outstanding issue of innocent passage of warships through the territorial sea, a question which was not settled in the draft. Negotiations on the question of delimitation of the territorial sea between States with opposite or adjacent coasts had also to be completed. There were other outstanding issues, one of which was the question of the conservation of living resources in areas of the high seas adjacent to the 200-mile exclusive economic zone. That problem was not dealt with in the present text of article 63 of the draft convention; and his delegation hoped that negotiations would be continued with a view to improving the text and taking that point into account.

56. Mr. ENGO (United Republic of Cameroon), Chairman of the First Committee, appealed to the representatives of the United Republic of Tanzania and Kenya to trust the Collegium

to deal with the points which they had raised, and join in the general consensus of approval of the General Committee's recommendations.

57. Mr. IBAÑEZ (Spain) said that he shared the concern expressed by other representatives concerning the interpretation of the first condition in paragraph 2 of the General Committee's recommendations regarding outstanding issues. He believed that the interpretation of that condition should be very broad, so that all outstanding problems could be solved. In that way, the Conference would avoid the submission of formal amendments—a procedure which no one desired.

58. The PRESIDENT appealed to the representatives of the United Republic of Tanzania and Kenya to accept the General Committee's recommendations, on condition that the period specified therein for the next session of the Conference would be adopted on the understanding that, once the Collegium had submitted a detailed programme of work, adjustments could be made.

59. Mr. WARIOBA (United Republic of Tanzania) expressed his full confidence in the Collegium.

60. The PRESIDENT said that, if there were no further comments, he would take it that the Conference agreed to adopt by consensus the General Committee's recommendations in document A/CONF.62/114.

It was so decided.

Date of the closure of the resumed session

61. The PRESIDENT said that, following the consideration of the question by the Collegium, the General Committee had decided not to recommend the extension of the present session for a fifth week. In the absence of objections, he would take it that the Conference agreed that the resumed tenth session should end on 28 August 1981.

It was so decided.

Programme of work for the fourth week of the session

62. The PRESIDENT introduced to the Conference the programme of work for the fourth week of the tenth resumed session, as recommended by the General Committee. In the absence of objections, he would take it that the Conference agreed to adopt that programme.

It was so decided.

The meeting rose at 8.15 p.m.

154th meeting

Friday, 28 August 1981, at 11 a.m.

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

Report of the President on the consultations on delimitation

1. The PRESIDENT observed that the question of delimitation had been an outstanding issue for a number of years, and no solution had until now been found.

2. During the first part of the present session in New York he had begun to take an active interest in the search for a solution to the problem of delimitation, and had held regular meetings with the chairmen of the sponsors of documents NG7/10 and NG7/2/Rev. 2, and with many delegations both in and outside the two groups.

3. At the resumed session, he had continued his regular consultations with the chairmen of the two groups and, with

the assistance of the representative of Fiji, had formulated a proposal for a solution (A/CONF.62/WP.11). During his consultations, he had gained the impression that the proposal enjoyed widespread and substantial support in the two most interested groups of delegations, and in the Conference as a whole. He would now ask the chairmen of the two groups to confirm that there was indeed substantial support for the proposal in their respective groups.

4. Mr. HAYES (Ireland) said that the question of delimitation had been the subject of negotiation and consultation in various forums for many years. Following consideration of the proposal in document A/CONF.62/WP.11 by the group of sponsors of document NG7/10, he could confirm that the pro-