

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/C.2/SR.1

Summary records of meetings of the Second Committee 1st meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume II (Summary Records of Meetings of the First, Second and Third Committees, Second Session)*

SECOND COMMITTEE

1st meeting

Wednesday, 3 July 1974, at 10.30 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Organization of work

1. The CHAIRMAN said that the results of his consultations with the officers of the Committee, the Chairmen of the regional groups and some individual delegations led him to feel that there was general agreement on a number of aspects of the organization of the Committee's work. First, the Committee should begin its work on substantive matters the following week, towards the end of the general debate in the plenary meetings. He had been in touch with the President of the Conference with a view to arranging meetings so as to allow representatives to attend at least part of the plenary meetings. It had been suggested, for example, that the Committee might begin its work earlier in the morning and finish earlier.

2. Secondly, the topics assigned to the Committee should be taken up in official and unofficial meetings, as appropriate, with the Committee Chairman presiding. The success of the approach used by the President of the Conference in negotiations leading to the adoption of the rules of procedure was an excellent example of what could be achieved by discussion in unofficial meetings. Although no working groups would be established, at least at the initial stage, one or more unofficial *ad hoc* groups could be set up.

3. Thirdly, the items assigned to the Committee should be considered one by one in the order in which they appeared in the list. The idea was to consider each of the items, to identify the principal trends and reduce them to generally acceptable formulae, and then to "put them on ice", so to speak, without any decision. During the discussion of any given item, delegations could, of course, refer to related items. No decision would be taken before all the closely interconnected items had been fully considered. He suggested that during that stage of the discussions there should be no attempt to produce a definitive text of any convention provisions or articles relating to the items discussed by the Committee; drafting could be left until later. If real and significant results were to be achieved, the Committee must concentrate on the fundamental issues to be regulated by the future convention.

4. Fourthly, it was not yet possible to draw up a time-table, although the officers of the Committee were working on a tentative schedule. There were many items to be discussed, and it would be extremely difficult to allocate a definite time to each. The officers of the Committee could be given the responsibility of reviewing the progress of the work periodically in the light of the time available. Special steps could be taken, as provided in the rules of procedure, to expedite work when it was thought that the Committee was falling behind. It was important to retain sufficient flexibility for the Committee to be able to adapt its programme to the progress of its discussions.

5. Fifthly, he suggested that the Committee should not take a formal decision on the documentation which would serve as a basis for its work. Use could be made of all the documents

available. Those pertaining to the meetings of the preparatory committee would be extremely useful and should be discussed. Any new proposals by delegations and any suggestions that would help to reconcile divergent viewpoints would be very welcome.

6. Mr. YANKOV (Bulgaria), speaking on behalf of the group of Eastern European States, paid a tribute to the Chairman of the Committee.

7. The group on whose behalf he spoke was generally in agreement with the suggestions made concerning the organization of work. In view of the importance of the items to be discussed, substantive meetings should begin at the end of the general debate in the plenary meetings. Both official and unofficial meetings should be held; working groups might be set up later, but he agreed that it was too early to decide on their nature and terms of reference. Once the general feeling of the Committee on a particular item had been established, it should be "put on ice" for future consideration. Informal *ad hoc* working groups could be formed by delegations with similar views, or by delegations which wished to smooth out their differences. The existence of such groups must be conditional on their dealing with substantive issues; if used flexibly, the results achieved would be more effective. He stressed the need for extreme flexibility in the time-table of work: it might be misleading to draw up a tentative time-table.

8. Although the idea of limiting the length of statements in the general debate—a step allowed by the rules of procedure to expedite the work—might cause difficulties for some delegations, it would nevertheless be a wise step.

9. Mr. CISSÉ (Senegal), speaking on behalf of the African group of States, paid a tribute to the Chairman of the Committee.

10. The African group agreed that the Committee should start its work immediately. It did not favour the establishment of working groups, because the small size of many of the African delegations would prevent them from participating effectively in the work of a large number of such groups. It would prefer matters to be considered in official and unofficial meetings of the whole Committee. Experience of the approach used by the President of the Conference had shown that unofficial meetings were a useful technique. Although a decision by the Organization of African Unity (OAU) had made it imperative for the African countries to give special consideration to questions of the territorial sea and the economic zone, the African group could accept the suggestion to reach provisional agreement on the items one by one and to take a final decision only at the end. Flexibility was very important.

11. He pledged the co-operation of the African group in the work of the Committee.

12. Mr. GALINDO POHL (El Salvador), speaking on behalf of the participants in the meetings of the Latin American States

attending the Third United Nations Conference on the Law of the Sea, pledged the full co-operation of those States and said he hoped that the goodwill of all delegations would help to lighten the burden of responsibilities borne by the Chairman, whose statement had summed up the general feeling of the Committee. The Latin American meetings had convened twice to discuss the organization of work and had reached the same conclusions as those of the Chairman. The Committee should begin its work towards the end of the general debate in the plenary meetings; it would facilitate the work of the Committee if it were to conduct some of its business as an unofficial working group of the whole. Such an arrangement would also ensure complete co-ordination between the official and unofficial meetings. Official meetings were necessary for the purpose of hearing statements to be included in the records and for taking decisions. Other working groups could be established later. The suggestion to discuss items one by one would allow references to be made to related questions and would ensure the necessary order and flexibility. He endorsed the suggestion to "put on ice" items that had been concluded, in order to allow discussion of subsequent topics. The items would be considered separately, but decisions would be taken on the question as a whole. The question of drafting could be dealt with later. The time-table of work should be very tentative; it should be reviewed periodically by the officers of the Committee, who could suggest how much time should be allotted to each item. The Chairman's comments on documentation were very pertinent.

13. He paid a tribute to the Chairman of the Committee and said he thought that a good start had been made.

14. Mr. MANNER (Finland), speaking on behalf of the group of Western European and other States, said that a number of recommendations had been made at that group's meeting to discuss the organization of work. There should be only one working group—a group of the whole presided over by the Chairman of the Committee. The general debate should be limited as much as possible. It had been recommended that the Second Committee should be given priority where meetings were concerned, because of the vast range of items it had to cover. The time-table should be only indicative and should be as flexible as possible. All the documents available should be taken into account, particularly the alternative texts.

15. The CHAIRMAN said that he had already asked the President of the Conference to give the Second Committee priority, in view of the number and difficulty of the items it had to discuss. He had pointed out to the President that the fact that the Committee was behind the others in its work justified special treatment. The President had agreed, and the Committee could count on his full support. The general debate should be a brief exposition of the views of delegations; he hoped that delegations which did not have new proposals to make would not participate in the general debate.

16. Mr. CHAO (Singapore), speaking on behalf of the Asian group of States, paid a tribute to the Chairman and pledged him the group's full co-operation.

17. In general, the group was in agreement with the Chairman's proposals. As far as possible there should be no conflict between meetings of the plenary Conference and the Second Committee. There probably would be no need for working groups in the early stages of the Committee's work, but some members of the Asian group felt that the possibility of limited working groups should not be ruled out.

18. The group agreed in general that the items should be taken in order, but some members felt that the approach should not be rigid, since many items overlapped. There was general support for the Chairman's proposal that decisions should be deferred until all the items had been considered. The group agreed that there should be a tentative but flexible time-table for the consideration of the various items.

19. Mr. STEVENSON (United States of America) paid a tribute to the Chairman. His delegation accepted the Chairman's suggestions for the programme of work; they were flexible and tailored to the Committee's needs. He hoped that the general discussion stage would be limited and that delegations would direct their thoughts to the next stage—that of the preparation of texts. Although he agreed that the time had not yet come for drafting, the way should be prepared for it. Suitable organization of the Committee's work was essential if specific texts were to be drafted by the end of the summer.

20. Mr. ZEGERS (Chile) agreed that the Committee should concentrate on the basic issues and that there should be a limit to the length and number of statements in the general debate.

21. It was important that results should be achieved at the Caracas stage of the Conference, not only because of the efforts made by the Government of Venezuela, but also because, if the Conference achieved no results after 10 weeks, it would count as a failure. The Conference must adopt the key articles of a convention and their titles—in the form of a package deal. The package deal must not be merely a list of principles but must consist of the specific articles of a treaty. In the initial stages the Committee should not seek to attain legal perfection but rather to draft alternative texts which could be reviewed at a second reading.

22. He suggested that there might be a gentleman's agreement that no delegation should speak for more than 10 minutes in the general debate.

23. Mr. TUNCEL (Turkey) agreed with the representative of Chile that the Committee should concentrate on the basic issues; it must find a way of identifying divergent trends so that it could deal with them.

24. He agreed with the Chairman's proposal that there should first be a general debate, which would give new participants a chance to express their views, and thought that only such participants should speak in that debate. His own delegation would not do so and he hoped that the other delegations which had already made their views known would also refrain from speaking.

25. He noted that the spirit of *entente cordiale*, which reflected the idea of a gentleman's agreement, had not existed before the convening of the Conference. It was a good omen that such a spirit had been manifested in the adoption of the rules of procedure. The Committee must try to display that spirit in its own work.

26. He agreed that it would be undesirable to have a proliferation of working groups. It would be better for the sponsors of alternative draft articles to meet informally and try to reconcile their differences.

27. He endorsed the Chairman's suggestion that the Committee should use all the documentation available to it. Since the Committee already had before it many alternative texts, he did not think it necessary to draft any new ones. The sponsors of various articles should attempt to prepare definitive texts for submission to the Committee. He agreed with the representative of Chile that at Caracas the Committee should at least produce a set of general principles.

28. Mr. JEANNEL (France) said that the Chairman's proposals met the requirements of the situation and had his delegation's full support. Flexibility was indispensable for the successful conduct of the Committee's work. The Committee must adapt itself to the circumstances and select the most suitable method of work for each situation.

29. Mr. KEDADI (Tunisia) said that his delegation endorsed the Chairman's proposals and was particularly anxious that the Committee should begin its work as soon as possible and concentrate on achieving realistic and practical results.

30. He agreed that a flexible system of unofficial and official meetings was an excellent method but wondered whether it

would be possible to define at the current meeting how and when any working groups would be set up and what their terms of reference would be. His delegation, too, would be reluctant to have a multiplicity of subsidiary bodies, since that would make participation difficult for the smaller delegations.

31. The Committee should begin with what it was possible and easiest to do and then go on to the more difficult items. The officers of the Committee might group together similar alternative articles, and then the sponsors having similar ideas on a given topic should meet to attempt to reconcile their differences and agree on joint texts. At a later stage, working groups consisting of the sponsors of divergent texts might deal with the more complicated political matters requiring mutual concessions.

32. He noted that the Committee had taken no decision on documentation. His delegation felt that all existing documents should initially be considered as documents of the Committee, to which any delegation could submit amendments. The Committee would thus be able to begin its work in a practical manner.

33. The CHAIRMAN noted that the distinctive feature of the system he had outlined was its flexibility. He did not think that any working groups should be set up until the Committee's work so required. To begin with, the Committee would meet either officially or unofficially as a working group of the whole. Of course, that did not exclude the possibility of forming *ad hoc* working groups made up of representatives with similar views, and on occasion he might himself suggest that the sponsors of similar texts should meet informally. It might also be necessary for delegations with divergent views to meet in a working group, and the Committee might decide to set up open-ended or limited working groups to study specific topics. He urged that at the current stage the Committee should not take a firm decision on the matter.

34. Returning to the question of documentation, he said that the intention was that all existing documents should be considered documents of the Conference and the Committee. His proposal had been intended to prevent a debate on the status of documents. The Committee would certainly want to take advantage of the important work done in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. There would, of course, be new documents, notably from the States which had not taken part in the work of the sea-bed Committee.

35. Mr. ZOTIADES (Greece) said that his delegation, which would give the Chairman its full co-operation, accepted the programme of work outlined by him. He was gratified that all geographical groups had basically similar ideas on the subject, especially with respect to the suggestion that there should be one working group presided over by the Chairman.

36. The time-limit for statements in the general debate should be 10 minutes and delegations that had had the opportunity of expressing their views at the preparatory session should refrain from doing so during the general debate, thus giving priority to new delegations.

37. He trusted that the session at Caracas would produce specific articles of the convention and, to that end, the working group of the whole should, as had been suggested, begin with what was possible and feasible. It would be premature at the current stage to decide on the establishment of *ad hoc* groups; there could, instead, be informal meetings of sponsors of proposals in order to arrive at compromises.

38. Mr. LACLETA Y MUÑOZ (Spain) said that his delegation shared the Chairman's objectives and was gratified that the Committee would be able to adjust its work programme to its needs. He proposed that, in addition to appearing in the summary records, the Chairman's statement should be distributed as a Committee document.

39. Mr. FRASER (India), pledging the full co-operation of his delegation, said that he agreed with each point in the programme of work suggested by the Chairman. While his delegation agreed that working groups should be formed as needed, it opposed any fragmentation which might result from a proliferation of *ad hoc* groups. The procedure used by the President of the Conference for the adoption of the rules of procedure should be followed.

40. Mr. BAKULA (Peru) offered the Chairman the full co-operation of his delegation and said he hoped that the session of the Conference in the city of Simón Bolívar would lead to positive results. There seemed to be general agreement on the programme of work suggested by the Chairman and the adoption of a flexible approach would enable the Committee to formulate conclusions reflecting the position of the participating States.

41. Mr. ZULETA TORRES (Colombia) supported the work programme suggested by the Chairman, particularly in the light of the clarifications given.

42. Mr. ROSENNE (Israel) said that his delegation generally agreed with the Chairman's approach to the work of the Committee. He was particularly gratified by the suggestion that both official and unofficial meetings would be presided over by the Chairman and by the Chairman's clarifications regarding documentation.

43. The question of working groups was a delicate one and he shared the views of some delegations that it would be premature, at the current stage, to take a decision on the matter. Working groups should not be institutionalized, nor should they be given too formal a status. The sponsors of similar proposals should try by themselves to narrow any gaps between their respective positions.

44. His delegation was more concerned with the broader negotiating process which, under the rules of procedure, was to be the main feature of the Committee's work. The five points outlined by the Chairman seemed to meet that requirement, especially with regard to formality and flexibility.

45. Mr. TREDINNICK (Bolivia) agreed with the Chairman's suggestions regarding the programme of work.

46. Mr. SANTISO GALVEZ (Guatemala) agreed that there should be a 10-minute time-limit for statements in the general debate and said that his delegation, which completely endorsed the programme of work, would co-operate fully.

47. The CHAIRMAN, after thanking all delegations for their assistance in preparing the programme of work, said that, if he heard no objection, he would take it that the Committee accepted the guidelines he had set out.

It was so decided.

48. The CHAIRMAN said that, as the representative of Spain had suggested, the complete text of his statement would be distributed to all members of the Committee for reference.¹

49. He appealed for self-discipline not only in limiting the length of statements, but also in deciding whether to speak. The positions of many States were well known and, unless there were changes, he appealed to them not to participate in the general debate. If he heard no objection, he would take it that the Committee agreed to take no decision on the proposal to limit the length of statements in the general debate to 10 minutes until the need arose.

It was so decided.

50. The CHAIRMAN said that he would consult with the President of the Conference on the date of the Committee's first meeting on substantive issues. The date and time would be announced sufficiently in advance for delegations to be prepared. Following the guidelines he had suggested for the pro-

¹ The full text of the Chairman's statement was subsequently circulated as document A/CONF.62/C.2/L.2.

gramme of work, the first item would be the question of the territorial sea (item 2), but that would not prevent delegations from referring to or raising points on other items, if they considered them interrelated.

51. He expressed his thanks to all those who had paid him compliments and had pledged their co-operation.

The meeting rose at 12.25 p.m.

2nd meeting

Tuesday, 9 July 1974, at 9.55 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Territorial sea [Agenda item 2]

1. The CHAIRMAN said that, in accordance with the decision taken at its first meeting, the Committee would begin its substantive consideration of the items allocated to the Second Committee (see A/CONF.62/29) with item 2, dealing with the territorial sea. As had been agreed, there would be a short general debate on each item. He recalled that the Committee had decided to appeal to all delegations to use self-discipline so as to keep the general debate as short as possible; as a general rule, only those delegations which had not taken part in the work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, or which had since changed their views, should speak in the general debate; the Committee was to work in a flexible manner, and in the debate on any given item delegations might refer to other related items.

2. He noted that the sea-bed Committee had done considerable preparatory work on the question of the territorial sea and he drew attention to the various draft articles relating to item 2.1, on the nature and characteristics of the territorial sea, including the question of the unity or plurality of régimes therein, which appeared on pages 3 and 4 of volume IV of the report of the sea-bed Committee (A/9021 and Corr.1 and 3). Three broad trends emerged from those articles: first, the traditional concept of the territorial sea as the zone adjacent to the coasts and internal waters of a coastal State, over which that State exercised full sovereignty, subject only to the right of innocent passage through the territorial sea; secondly, the concept of "national ocean space" over which the coastal State had jurisdiction; and thirdly, the proposal that each coastal State should be free to decide the limits of its territorial sea and to exercise sovereignty up to a limit of 200 nautical miles, a limit within which the coastal State would be able to establish various régimes and might even decide not to exercise its full sovereignty.

3. He invited delegations to comment on the item and noted that the Committee's initial aim was not to draw up final texts but to define substantial areas of agreement.

4. Mr. TUNCEL (Turkey) suggested that in future the *Journal* should indicate the items to be taken up at meetings of the Committee and should give details of the relevant documents.

5. The CHAIRMAN said that there would be no difficulty in complying with that suggestion. The *Journal* had not given details of documents for the current meeting because at its previous meeting the Committee had decided that all documents could be discussed.

6. Mr. JAGOTA (India) said that in his delegation's view the definition of the nature and characteristics of the territorial sea should be simple and neutral, taking account of the major concerns of all countries. He wished to submit a draft text of article 1, which was similar to the United Kingdom

proposal (A/CONF.62/C.2/L.3). His country thought that the territorial sea should be small rather than large; if the question of the economic zone was satisfactorily settled, the Indian proposal might receive general support. The text, which he would submit formally in writing to the Secretariat, was the following:

"The sovereignty of a State extends beyond its land territory, and its internal or archipelagic waters, to a belt of sea adjacent to its coast, described hereinafter as the territorial sea.

"The sovereignty of a coastal State extends also to the air space over the territorial sea as well as to the sea-bed and subsoil thereof.

"The coastal State exercises its sovereignty in and over the territorial sea subject to the provisions of these articles and to other rules of international law."

7. Mr. DJALAL (Indonesia) suggested two amendments to the Indian text: the second paragraph should include a specific reference to the sovereignty of the coastal State over water columns and a reference to its sovereignty over the resources of the territorial sea.

8. Mr. JAGOTA (India) said that the amendments were acceptable to his delegation and suggested that the second paragraph should be reworded to read: "The sovereignty of a coastal State extends to the air space over the territorial sea, and to the sea, the sea-bed and subsoil thereof, as well as to their resources." That wording made it clear that the reference to resources did not relate to the air space.¹

9. Mr. SANTISO GALVEZ (Guatemala) asked whether it was in order for the Committee to consider the Indian text and Indonesian amendments before having them in writing.

10. The CHAIRMAN said that the proposals would not be considered until they had been circulated in writing. The purpose of the current discussion was to present ideas.

11. Mr. ZOTIADES (Greece) said that his delegation found the Indian proposal acceptable, although it had some hesitation regarding the second paragraph, which it found misleading. He therefore proposed that the second paragraph of the Indian proposal should begin with the words "The sovereignty over the territorial sea of a coastal State extends . . .".

12. Mr. VALENCIA RODRIGUEZ (Ecuador) endorsed the points made by the Chairman in his statement at the previous meeting concerning methods of work which had been circulated as document A/CONF.62/C.2/L.2. His delegation was in favour of the procedure outlined in paragraph 3 of that document. All proposals should be circulated in the different working languages before they were considered.

13. Mr. POLLARD (Guyana) said that his delegation intended to submit a formal proposal for the formulation of two

¹The text of the article, as amended, was subsequently circulated as document A/CONF.62/C.2/L.4.