

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

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

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**A/CONF.62/C.1/L.1**

**Opening statement by Mr. P. B. Engo, Chairman of the First Committee, at the first meeting on 10 July 1974**

*Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume III (Documents of the Conference, First and Second Sessions)*

## DOCUMENTS OF THE FIRST COMMITTEE

### DOCUMENT A/CONF.62/C.1/L.1

#### Opening statement by Mr. P. B. ENGO, Chairman of the First Committee, at the first meeting on 10 July 1974

[Original : English]  
[10 July 1974]

We, in this Committee, assemble at this time entrusted with perhaps the greatest responsibility of designing international peace with norms and institutions hitherto unknown. Despite the illusions that unique problems and new concepts may create elsewhere, the realities of the new revolution of thought relating to the area of the ocean space will be worked out in this Committee.

As we embark on the substantive work of this, the Third United Nations Conference on the Law of the Sea, our endeavours must be launched by a profound sense of the historic moment. We gather here in Caracas at the culmination of a long and arduous effort, that has fostered a dramatic upsurge of awareness, both of the multidimensional importance of the oceans to mankind and of the magnitude and complexity of the issues which their use gives.

From the vantage point of retrospection, the prescient and forceful appeal to the United Nations in 1967 by Ambassador Arvid Pardo was a cry out to the entire world for setting sail an overdue quest for history's most productive region of international peace—the ocean space. It had become anachronistic to refer to the area as “new”. Efforts in 1930 had failed. The Geneva Conventions, with all their imperfections and limited endorsement, had been overtaken by events almost before they were born. The decade of the sixties saw a new birth of mushrooming claims of interests given by the “fictionalization” of the so-called new international legal order of the times. Technology and self-determination of peoples completely changed the character of the international society.

Thus, we were to observe an increase in the number of actors on the international scene, compelling revolutionary pressures on the existing order. In 1958, only 86 States participated in the codification of the four Geneva Conventions. Today, we are an assembly of some 150 nations, most of which are former colonies of some of the creators of the old order; some have never participated in an independent capacity, or at best a handful of them played only a marginal role in the establishment of so-called international law dealing with the ocean space.

The reluctance of these nations and indeed of several developed nations to be bound by many elements of a legal order laid down essentially by a dominant minority constituted an assault upon the central pillar of law, its widespread acceptance.

Thus, the fisheries disputes and unilateral extension of territorial waters and specialized jurisdictions witnessed ever more frequently in the last decade were symptomatic of an impending breakdown.

On the other hand, the accelerated progress in technological development and consequent substantial changes in economic conditions have also compelled the international community to address itself anew to the legal framework governing its oceans.

This progress both greatly broadened the horizon of opportunities for the use of the ocean and its resources. It is equally true that it tragically brought with it new seeds of conflict by increasing the number of issues involved, provoking the proliferation of different and often divergent national perspectives. Even the geographical location of States, the physiography of the offshore area, its level of development and general maritime posture took on comparatively disproportionate importance. More fundamentally, the mounting tensions that ensued—over fisheries, navigation, offshore hydrocarbon resources, deep-sea mineral deposits—reflected political and economic considerations regarding resource management and distribution, as well as national security.

Our task is therefore to build a new legal order for the oceans, pragmatic and durable enough to harmonize these diverse interests in its response to the wider realities of history. We must accommodate the structure of universal interests and such collective needs and interests as make for the good of all. We must also legislate for posterity, adopting treaty articles that can withstand the inevitability of changing times. In this task we are fortunate in being equipped with a number of new conceptual building blocks. Specifically, we in this First Committee, particularly, shall have as a base the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof beyond the Limits of National Jurisdiction.<sup>1</sup> We are bound by the concept of “common heritage of mankind” with respect to the area and its resources, transcending the inherent opposition between the doctrines of *res nullius* and *res communis*. This and the establishment of an international régime and machinery, the concept of “orderly and safe development and rational management of the area and its resources” and of the benefit of “mankind as a whole”, are innovative approaches that promise to break and reverse our descent into chaos.

Yet new concepts are not enough, however indispensable they may be in dominating our work. We must breathe life into these concepts—give them operational significance and the precision of law.

Concretely, the issues with which we must come to grips relate to the “status, scope and basic provisions of the régime, based on the Declaration of Principles” and the “status, scope, functions and powers of the international machinery”. Under each of these headings, the issues to be resolved are numerous and difficult, as all of you are well aware.

It is much too late in this endeavour for us to entertain any illusions about the capacity of each individual State or group of States to identify its needs and interests. The extent of benefits, or the lack of it, is clearly a matter of individual opinion.

<sup>1</sup>General Assembly resolution 2749 (XXV).

If this subject of the Law of the Sea has demonstrated anything, it is that each nation is best judge of its priorities. Benefits in economic, political and security terms are interchangeable on the priority lists of States, according to their perspectives of national integrity and development.

Therefore, let us listen to others speak of their needs and interests, while we state ours. The spirit of compromise can only be firmly built on the understanding of what truly hurts others. Threats, whether economic, political or numerical, are no longer effective in the desperate world we live in. This is becoming obvious in international relations; it is an even more important fact for us here as we try to reconcile conflicting views born of the divergency of interests and needs.

In looking forward to the momentous and exciting negotiations which we must begin now, we cannot but be imbued with a profound sense of responsibility, to our respective nations on the one hand, and to the international community on the other; for what we accomplish or fail to attain will leave its mark for generations to come.

I should like now to turn to our organization of the initial stages of our work. I wish, first of all, to draw the attention of distinguished representatives to the fact that, including this very day, there are only 36 working days left for the Conference as a whole to conclude its work. This excludes 24 July, which is Simón Bolívar Day, celebrated as a holiday in this land. During this period, we too must negotiate treaty articles and have them processed in the larger machine, for adoption as part of the Convention on the Law of the Sea.

My first appeal, therefore, is that we do not dissipate pressing time on matters which cannot advance our work. The whistle is blown for negotiations to commence. Let us scorn all procedural time-consuming debate. The procedures we have adopted were designed to facilitate the attainment of true success, not to block it.

Furthermore, it is equally necessary that, in drawing up our organizational procedures, we should, as a Committee, allow ourselves sufficient latitude to modify and adapt present intentions in the light of circumstances, as they emerge in the future.

Secondly, I should like to draw the attention of distinguished delegates to an important and overriding issue concerning this Committee. There appears to be an optical illusion that we are far ahead of the field with our work. I strongly appeal to representatives to realize the nature and complexity of our task here.

The Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction attained no more than an assembly of the wide divergencies of opinion in a simple set of documents. Its task was merely to identify areas of agreement and those of disagreement. Ours is to negotiate their resolution and the actual provisions of a Convention. We have not started negotiating. Even where there appears to be common ground, we must still resolve intricate questions of interpretation. The major difficulties remaining unresolved are enormous. We cannot afford the luxury of complacency or even the undesirable comfort of postponing the task to another session of the Conference. In a businessman's approach, we must get down to the business of working out the texts and fast. If we fail to do this, we may find that the political decisions in other Committees may take us by surprise. Our task here calls for political and economic decisions, but also for the juridical statement of the background to the Convention as a whole. This is the implication of elaborating an international régime and the machinery. We are dealing with dimensions in the international zone beyond national jurisdictions. Nothing is as clear here as the issues involved in, for instance, the problems of the economic zone, in which no structural or institutional problems are being resolved. Our work transcends that type of problem which involves no more than the question of the declared rights of States.

Against this background, I have undertaken intensive consultations in recent weeks, involving members of the bureau and all geographical groups. As a result of this, I wish now to make certain proposals involving our work over the next three weeks, which I hope will gain the approval of the Committee.

The first problem I confronted in these consultations was a fundamental one: where and how to commence our task, having regard to the preparatory work done under the auspices of the United Nations and the preparatory committee. Initial opinions varied on this point, but I am happy to observe that there now appears to be a consensus that, having regard to all the circumstances, it would be prudent to start with a brief period of debate. The purpose of this debate would appear to be: to enable representatives to comment on the issues of fundamental importance, the resolution of which would facilitate consensus in outstanding areas of divergency of views.

Unlike general debates, this period should not be spent on mere reiteration of national position, especially where these have either been documented or reflected in any of the existing alternatives appearing in the documents of the preparatory committee. Our task here is not to "carry on" the work of the sea-bed Committee but to negotiate the issues posed by the preparatory committee of this Conference. By our very participation here, we have endorsed the fact that this preparatory work had advanced enough for the final negotiating process to begin.

It is my hope, therefore, that the debate will be brief, and that it will focus only on the major issues over which there appear to be wide divergencies of view. I encourage it to be utilized only by those who either see a need to give first time reaction to possible solutions or wish to indicate any significant movement which may aid the resolution of such issues. In both cases, the aim ought to be the elimination of divergencies and especially the unimpressive list of alternatives that appears in the documents of the Preparatory Committee.

Furthermore, it would appear from my consultations, that there is a general concern for the limited time available and therefore a feeling that the debate should be brief. I accordingly propose that it should open this very day and last at most a week. We would have night meetings if the list of speakers makes this inevitable. I propose, with your approval, to close the list of speakers on Friday, 12 July at 5 p.m. I must add that these debates could well be concluded earlier than planned if there is full co-operation and the necessary restraint.

I wish also to propose that, in principle, each speaker takes no more than 10 to 15 minutes at the most. This I do sincerely hope will be fully respected as much as possible, mindful of the fact that the issues have been thoroughly exposed and that we are at the stage when their resolution is imperative.

I do not, by these proposals, intend to fetter the right of any delegation to raise any matter it wishes. Yet by general consent, I hope the pressure of time and the urgency thrust upon our generation by the gigantic problems of the ocean space will discipline or dampen any enthusiasm for the sort of wide-ranging debate that was necessary in the past but is clearly undesirable now.

My emphasis is on concentrating instead on identifying what representatives regard as the main issues facing us and in expressing views or explaining how they believe that these might be resolved.

In making this suggestion also let me say that I have not failed to recognize two particular aspects of our work that have aroused strong feelings on the part of some delegations: the economic implications of sea-bed exploitation; and the rules and regulations covering such exploitation.

Without wishing to limit the rights of delegations in any way to raise these and other matters, I venture to suggest that they cannot fruitfully be discussed in any great detail in these opening debates. It may be more helpful for interested parties, at

this first stage (if they believe this to be necessary), to confine themselves to the underlining issues relating to their place in the system we are attempting to establish for the International Authority. Obviously, we shall have to address ourselves to those matters more precisely in the future, but the timing and method of our consideration of them should be the subject of further consultations.

Lastly, having concluded our brief examination, hopefully defining further the main problems that stand in our way, we shall have created a good basis for moving to the next stage of our work. This, I believe, will involve the peaceful conversion of our formal Committee into an informal body of the whole. I believe that there is general agreement that this informal meeting should last two weeks. During that time all attempts shall be made to, as it were, tidy up the misgivings of the preparatory materials, by eliminating brackets and alternatives which becloud fruitful negotiations for final treaty articles. In more specific terms, I hope it will be possible to remove such brackets and alternative texts which need not appear, thus leaving us with one or two alternatives of substance for realistic negotiations thereafter. Nothing I have said is intended to be

construed as precluding the elimination of all or any brackets or alternatives if a consensus can immediately be found.

The full formal Committee will receive a verbal report at the end of that period. I intend to request an interim one some time before that. In the meantime, the Chair intends to consult further on the next stage of our work, having regard to all the facts and situations.

Finally, following consultations on the subject, I believe that there is general support for the Chair to nominate Mr. Pinto of Sri Lanka to head the informal body.

Mr. Pinto is well known to most, if not all, of you for his dedication to the difficult task assigned to the First Committee. He worked very closely with me in Sub-Committee I of the sea-bed Committee and also in the preparatory committee. I have no hesitation in commending this brilliant and dedicated jurist for your approval.

If I hear no serious objections to the proposals I have thus made, I shall take it that my impression is correct that you wish that they be adopted by our first consensus.

## DOCUMENT A/CONF.62/C.1/L.2

### Note by the Chairman of the First Committee

[Original: English]  
[26 July 1974]

In order to assist the Committee in the consideration of the questions relating to economic implications of sea-bed mining, the Chairman of the First Committee has prepared the following note containing the major summaries and conclusions of the pertinent documents presented to the Conference.

#### I. BASIC DOCUMENTS

Economic Implications of Sea-Bed Mineral Development in the International Area: Report of the Secretary-General (A/CONF.62/25).

Statement made by Mr. G. D. Arsenis on behalf of the Secretary-General of the United Nations Conference on Trade and Development (A/CONF.62/32).

The effects of possible exploitation of the sea-bed on the earnings of developing countries from copper exports: Report of the secretariat of the United Nations Conference on Trade and Development (TD/B/484).

The effects of production of manganese from the sea-bed, with particular reference to effects on developing country producers of manganese ore: Report of the secretariat of the United Nations Conference on Trade and Development (TD/B/483).

Exploitation of the mineral resources of the sea-bed beyond national jurisdiction: issues of international commodity policy: Case Study of Cobalt (TD/B/449/Add.1).

Exploitation of the mineral resources of the sea-bed beyond national jurisdiction: issues of international commodity policy: Note by the secretariat of the United Nations Conference on Trade and Development (TD/B/449).

Mineral production from the area of the sea-bed beyond national jurisdiction: issues of international commodity policy: Report of the secretariat of the United Nations Conference on Trade and Development (TD/113/Supp.4).

#### II. SUMMARY AND CONCLUSIONS OF THE REPORT OF THE SECRETARY-GENERAL (A/CONF.62/25)

1. This summary provides a brief review of the contents of the report. In view of the complexity of the subject, however, it

necessarily omits much of the analyses and accordingly should not in any sense be taken as a substitute for the text of the report itself.

2. Manganese nodules are the most likely deep-sea minerals to be exploited in the foreseeable future. Nodules are composed of fine-grained oxide material and are distributed widely over the floor of the world ocean. They vary widely in their composition, as well as in their physical and chemical properties. There is now considerable commercial interest in exploiting them for their component metals, chiefly nickel, copper, cobalt and manganese.

3. Only about 3 per cent of the sea floor has been extensively surveyed. However, intensive exploration in recent years has revealed enough about the extent and location of deposits to permit commercial exploitation of nodules. Potential commercial deposits exist in the Pacific and Indian Oceans, while none has yet been located in the Atlantic Ocean.

4. Various commercial groups have completed the exploration or prospecting phase and are now evaluating potential mine sites. Site evaluation focuses on estimating the average concentrations of the constituent metals in nodules and on the nodule density per unit area of the mine site. These are the key parameters which, with bottom topography, affect the potential profitability of a mine site. There is a great interest in the central Pacific region, which contains extensive concentrations of higher value nodules. Within this region, some evidence suggests that nodules with the highest potential value are concentrated in an east-west belt between 6°N and 20°N latitude and extending between 110°W and 180°W longitude.

5. The physical problem of recovering the nodules from the sea floor is proving to be a difficult one. As surficial deposits, nodules will be dredged and either pumped or hoisted from the sea floor. At the surface facility the nodules will then be loaded into barges or ore carriers for transportation to a processing plant. Under hydraulic lifting systems the nodules must be concentrated within a relatively small area so that the suction system can operate efficiently; this gathering process seems to be one of the most serious stumbling blocks in test operations.