

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

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## **57<sup>th</sup> Plenary meeting**

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# PLENARY MEETINGS

## 57th meeting

Monday, 15 March 1976, at 3.35 p.m.

*President:* Mr. H. S. AMERASINGHE (Sri Lanka).

### Opening of the fourth session

1. The PRESIDENT declared open the fourth session of the Third United Nations Conference on the Law of the Sea.

### Minute of silence for prayer or meditation

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

### Adoption of the agenda (A/CONF.62/45/Rev.1)

*The agenda was adopted.*

### Statement by the Secretary-General

2. The SECRETARY-GENERAL welcomed the representatives and said there was every reason to believe that the fourth session would prove to be of decisive importance for the successful outcome of the Conference.

3. The decision taken at the third session to prepare a single negotiating text was symbolic of the trust and confidence which the Conference had placed in its President and its Bureau. That decision was also significant for its commitment to proceed as expeditiously as possible towards the general agreement which was necessary for a single, comprehensive convention. Each participating State was to be congratulated on its strict adherence to the mandate laid down by the General Assembly in order to achieve a single convention encompassing the many complex and interrelated issues involved in the law of the sea. In that process, the Conference had adopted the most appropriate rules of procedure to expedite that task and had made a strong commitment to establish a convention aimed at securing the widest possible acceptance.

4. In pursuit of those goals, the participants in the Conference had been both skilful and innovative in their working methods. The preference for informal methods of work was now well understood and appreciated to such an extent that the negotiated decision, where a wide range of interrelated issues was involved, might become the preferred method for dealing with many other global problems which faced the international community. As the need arose, he was sure that the Conference would find ways of advancing its work, and the experience gained in the process would be of great interest and of potential value for other international undertakings.

5. He believed it was important to emphasize that the law of the sea had steadily evolved during the Conference and the sessions of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, which had preceded it. Progress towards a new comprehensive body of law for the seas was also apparent in the records of the Conference. It was reflected in the agreement on the machinery for decision-making as embodied in the rules of procedure, in the emergence of certain

dominant trends among the issues and in the Geneva decision to provide a single negotiating text. That text would be the essential working mechanism to enable the Conference to organize the next and most crucial stage of the process of negotiation.

6. Everyone appreciated the fact that much was at stake. A wide measure of international agreement on a profoundly complex issue which involved all nations could have a most significant impact on international co-operation and agreement in other areas. The hard realities of the formidable increase in the world's population over the next 25 years made it necessary to find, and to manage efficiently and equitably, the immense resources of the sea. General agreement was near in certain key areas, such as the limits of the territorial sea and the economic zone, while, at the same time, it was recognized that problems still faced those countries which did not benefit from the extension of national jurisdiction. The issue of passage through straits must also be resolved. The establishment of a sea-bed authority presented perhaps the most difficult, but the most important, issue of all. Lastly, a satisfactory solution must be found to ensure the optimum utilization and protection of fish stocks, and the very important problem of the conduct of scientific research must be resolved.

7. The sense of urgency to reach agreement on those difficult issues which was shared by all, and which had so clearly affected the work of the Conference, had alerted the world to the potential for dispute and confrontation that would lie in a failure to find acceptable solutions to the issues before the Conference. A unique opportunity that might not recur would have been lost if the uses made of the sea were not subjected to orderly development for the benefit of all and if the law of the sea did not succeed in contributing to a more equitable global economic system. There was a broad and growing public understanding and appreciation of the issues involved, and the successful outcome of the work of the Conference would also have a major impact on the establishment and implementation of the new international economic order.

8. The sea was a vital and living organism, and its law must reflect discernible patterns of progressive development. It was to that end that, in 1970, the General Assembly had drawn up 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> and called for the convening of a Third United Nations Conference on the Law of the Sea.

9. He firmly believed that a just, viable and durable agreement on the issues concerning the law of the sea was of the greatest importance in preserving peace for future generations. The ability of the international community to achieve workable solutions to global problems would be tested through the work of the Conference.

<sup>1</sup> Resolution 2749 (XXV).

10. Success would only be achieved if all nations recognized that it was in the long-term interests of each one that the Conference should succeed in establishing a law of the sea that would be respected by all. That would mark a decisive advance in the task of reaching global solutions to the immense world problems confronting all humanity. In the process of negotiation, accommodation, compromise and agreement lay one of the greatest challenges and hopes of the current time. He knew that the participants recognized the scale of that challenge, and he was confident that they would meet it, for it was not only the law of the sea that was at stake; the whole structure of international co-operation would be affected, for good or for ill, by the success or failure of the Conference.

#### Statement by the President of the Conference

11. The PRESIDENT welcomed all representatives and said that the fourth session of the Conference would be the most crucial one so far, because it was the first time that there had been a sound basis for negotiations. He thanked the Chairmen of the Main Committees for the diligence with which they had prepared the informal single negotiating texts. Representatives must now negotiate seriously, because of the responsibilities which they had both to their Governments and to the international community. No one delegation would be able to obtain all that it desired, but there would be a measure of achievement for all; in other words, compromise would be the key word of the session.

#### Organization of work and membership of subsidiary organs

12. The PRESIDENT announced that Mr. Galindo Pohl (El Salvador) had resigned as Chairman of the Second Committee and that the Latin American States had nominated Mr. Aguilar (Venezuela) to succeed him. If there was no objection, he would take it that Mr. Aguilar was elected Chairman of the Second Committee.

*Mr. Aguilar (Venezuela) was elected Chairman of the Second Committee by acclamation.*

13. Mr. GALINDO POHL (El Salvador) paid tribute to the new Chairman of the Second Committee for his outstanding work in the Conference and said that his delegation was gratified to see him elected.

14. Mr. AGUILAR (Venezuela) paid a tribute to the outgoing Chairman of the Second Committee. He thanked the Conference for electing him and said he regarded his election as an honour for his country, which was convinced of the importance of the Conference.

15. The PRESIDENT welcomed the delegations of Cape Verde, the Comoros, Mozambique, Papua New Guinea, Sao Tome and Principe and Surinam, countries which were participating for the first time as full members of the Conference.

16. He announced that the Group of Western European and Other States had decided that Belgium would replace Ireland as a Vice-President of the Conference during the present session. Secondly, the representative of El Salvador having been replaced by the representative of Venezuela as Chairman of the Second Committee, El Salvador would replace Venezuela as a member of the Drafting Committee. Finally, the General Committee had been informed by the representative of the United Kingdom, at its 14th meeting, that the United Kingdom would grant independence to the Seychelles on 28 June 1976; in accordance with past practice, he suggested that the Seychelles should be invited to attend the fourth session as an observer, without the right to vote, until it qualified for full membership in the Conference.

*It was so decided.*

17. The PRESIDENT said he had informed the General Committee, at its 14th meeting, that he had held discussions with the Chairmen of the Main Committees, the Chairman of the Drafting Committee, the Rapporteur-General and the Special Representative of the Secretary-General regarding the organization of work for the session. It had previously been decided that there would be no further general statements except on one or two items, which he would mention later. It had also been agreed that there would be no general discussion on the informal single negotiating texts. Accordingly, he suggested that the Chairmen of the Main Committees should proceed immediately to initiate negotiations. The negotiating texts could be discussed article by article, by groups of articles, or by concentrating on the key issues, in which case it would be left to the Committees themselves to decide what those issues were and to reach some measure of agreement on them. The precise procedure would depend on the nature of each Committee's mandate.

18. It had been suggested that, during the negotiations, any objections to or proposals regarding the texts should be submitted as informal amendments, since the texts themselves were informal. Amendments need not be in legal terms or treaty language, but they should be sufficiently clear and unambiguous to be put into proper treaty language at the appropriate stage.

19. It had been further suggested that only amendments of form should be submitted, and not drafts which would have the effect of changing the texts so substantially that they would lead to a proliferation of alternative texts. He did not believe that that suggestion was practical, because at the 55th meeting on 18 April 1975 it had been agreed that the single negotiating text (a) should take into account the formal and informal discussions previously held; (b) should be informal in character; (c) would not prejudice the position of any delegation; (d) would not represent any negotiated text or accepted compromise; (e) was a procedural device and was to serve only as a basis for informal negotiations; (f) would not affect the status of proposals already made by delegations; (g) would not affect the right of any delegation to submit amendments or new proposals.

20. He intended to confer regularly, at least once a week, with the Chairmen of the Main Committees, the Chairman of the Drafting Committee, the Rapporteur-General and the Special Representative of the Secretary-General to ensure, as far as possible, that even progress was being made in all three Main Committees. Informal plenary meetings would therefore be needed in order to ensure the proper co-ordination of the negotiations, and he suggested that the informal procedure and informal status of the texts should be maintained for a certain period in order to promote proper negotiations. That period should not be too short, lest the impression were created that undue pressure was being exerted on members, nor should it be so long as to give rise to complacency regarding the time available for agreement. What was needed was a judicious compromise. If the Chairman of a Committee found that there was a set of amendments commanding such widespread support as to justify the revision of the negotiating text, then he should be free to revise that portion of the text while retaining its informal nature. That would be entirely within the discretion of the Chairman concerned, who would act in accordance with the wishes of his Committee.

21. Each Chairman should obtain his Committee's agreement on the allocation of time for stating objections or proposing informal amendments. In that process, lengthy statements would not be necessary and the Chairman would decide how the informal negotiations should be conducted. That should be done with the full knowledge of each member of the Committee.

22. Concern had been expressed in the General Committee about small group meetings or "family gatherings". He therefore suggested that the results of such meetings should be conveyed to the Chairman of each Committee, who would then inform his Committee on decisions reached. The Chairmen could also decide, together with the members of their Committees, when a given Committee should hold formal meetings in order to obtain summary records.

23. At the proper stage, there would be a need to consider giving the informal single negotiating text a formal status. Perhaps a period of, say, four weeks should elapse before the Chairmen decided on revising their single negotiating texts on the basis of amendments which commanded a wide measure of support.

24. Formal meetings should, as far as possible, be avoided; however, it would be left to the Chairmen, in consultations with their Committees, to decide when formal meetings would be held. He suggested that, when it was decided to formalize the negotiating texts, the President should prepare a single document following consultations with the Chairmen of the Main Committees. That would not, however, preclude the Chairmen from conducting informal negotiations on the part of the document that was of concern to each Committee.

25. At the 14th meeting of the General Committee, the Chairman of the Drafting Committee had put forward his ideas on the role and function of that body and had said that he was at the disposal of the Chairman of any Main Committee.

26. It had been stated that limited group meetings had, to some extent, impeded the work of the Main Committees. He believed that that type of "inbreeding" could be harmful, since all delegations should be involved in the negotiations. He therefore suggested that no group meeting should interfere with the proceedings of the Conference itself, i.e., plenary meetings and meetings of the Main Committees.

27. The Special Representative of the Secretary-General should be kept informed of group meetings to be convened in consultation with the President or Committee Chairmen, so that the necessary facilities could be provided. The Special Representative would also organize daily briefings within the Secretariat on the work of all Committees and the progress of work in all Committees would be conveyed by the relevant Committee Secretaries to the President and the Chairmen of Committees.

28. He then drew attention to document A/CONF.62/WP.9, on the settlement of disputes, which he had prepared as an additional single negotiating text. Provision for the settlement of disputes had been made in the text prepared by the Chairman of the First Committee, but not in those prepared by the Chairmen of the Second and Third Committees. He believed that the text which he had prepared would facilitate the work of the Conference and, since no general discussion had been held on it, he would set aside a few days for a general debate on the matter.

29. He appealed to members of the Conference to avoid protracted debates on matters of procedure so that the international community could, at the end of the session, see at least a glimmer of hope for a treaty on the law of the sea.

30. Mr. PEACOCK (Australia) said that the preparation of a single negotiating text as a basis for discussion had provided an essential impetus to the work of the Conference. However, it was no use pretending that the single negotiating text required nothing more than polishing and punctuation to make it generally acceptable, since some proposals concealed major divisions of opinion which must be overcome before an agreement could be reached.

31. There were some who had thought that it was not necessary to replace the Geneva Conventions of 1958, and

some who had doubted whether any single treaty could resolve existing conflicts. Others had suggested that law of the sea problems should be settled on a bilateral or regional basis, or by the development of new customary international law. However, his Government thought it essential to conclude a convention in order to balance disadvantages with advantages; while the need for many States to reach further agreement on details not covered by a convention should not be excluded, the convention should provide the essential framework for the conclusion of any subsequent related arrangements. Every country had an interest in the orderly regulation of the use of oceans, and the re-establishment of an acceptable measure of stability would benefit the vast majority of States.

32. Discussions which had taken place in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and in previous sessions of the Conference had raised the expectations of Governments, and such expectations should not be disappointed. With reference to the area of the sea-bed beyond national jurisdiction, the 1970 Declaration of Principles had added considerable weight to the concept that the sea-bed beyond national jurisdiction and its resources were the common heritage of mankind. His Government had supported that concept, and as a result of the interessional consultations it saw hope for the acceptance of a system of assured access to the sea-bed areas for individual States and their nationals, as well as for the sea-bed authority itself; such a system would ensure the full development of sea-bed resources. Furthermore, it was to be hoped that divergent views on the structure of the sea-bed authority would be reconciled by a system which ensured a satisfactory representation of interests. The interests of States which were significant producers of the same minerals as would be produced from the sea-bed must be protected.

33. In the Second Committee, his country welcomed the growing acceptance of the concept of the economic zone. There were still, however, a number of important aspects in which it remained necessary to reconcile the interests of coastal States, of distant water fishing States, of land-locked States and of economically less developed States. The rights of the coastal States to living and non-living resources, including the right to exploit and control the fisheries resources of the economic zone, must coexist with rights of navigation and overflight. Many countries, including Australia, emphasized the importance of ensuring freedom of movement for ships and aircraft, not only on and over the high seas but also within and over straits, archipelagic waters and exclusive economic zones. However, his country also hoped that the convention would confirm the acquired rights of those coastal States which possessed appurtenant continental shelves.

34. In the Third Committee, progress had been made in implementing the commitment of the world community to the causes of environmental protection, scientific research and the transfer of technology. His country felt a particular responsibility for the protection of the environment of the waters surrounding the Australian continent and regarded achievement of agreement in that field as an essential part of the Conference.

35. A spirit of understanding and accommodation was vital to the work of each Committee. To be effective, a convention must be widely ratified and must go beyond merely formal compromise. Australia was heavily dependent upon the oceans with interests in many matters including freedom of navigation, development of sea-bed resources, access to fisheries and the protection of its coast-line, including the unique Great Barrier Reef, and was therefore strongly motivated towards the conclusion of a suitable convention. While Governments acting to protect their vital interests

were not to be criticized, it would be regrettable if the elaboration of a comprehensive law of the sea was jeopardized by premature unilateral action. His country would make every effort to promote solutions which safeguarded the widest possible range of interests.

36. Mr. ENGO (United Republic of Cameroon), speaking as Chairman of the First Committee, said that it was vital for all members of the Committee to be consulted at every stage of the proceedings and for representatives to be available at all times. While the participation of all delegations in informal consultations was difficult to attain, no major decision would be taken without the consent of all members of the Committee. He would be available for consultation at all times.

37. Mr. AGUILAR (Venezuela), speaking as Chairman of the Second Committee, said that the guidelines suggested by the President were excellent and, if followed, would ensure positive results. The use of informal consultations open to all members of the Committee would guarantee progress.

38. Mr. YANKOV (Bulgaria), speaking as Chairman of the Third Committee, said that all efforts should be directed towards achieving a compromise solution based on a comprehensive approach. The guidelines suggested by the President should provide the basic framework for negotiations, and it was to be hoped that the President would co-ordinate the work of the Committees by establishing a common time-table. Negotiations should proceed on an informal basis. The informal single negotiating text should be discussed article by article, but the Committee's approach should be flexible in order to ensure that key substantive issues would not be overlooked. Since a general debate on the main issues had already taken place, it was now time to concentrate on the drafting of a universal convention.

39. Mr. BEESLEY (Canada), speaking as Chairman of the Drafting Committee, said that, whenever necessary, the Committee would meet informally to consider drafting points submitted to it. In accordance with its mandate, the Committee was limited to the discussion of legal and technical questions, such as the standardization of terminology and internal contradictions in the convention. However, while willing to discuss points submitted to it, the Drafting Committee did not wish to anticipate decisions to be taken at plenary meetings. By meeting informally, the Drafting Committee also hoped to deal with the heavy workload in the most efficient manner possible.

40. Mr. RATTRAY (Jamaica), Rapporteur-General, agreed that all delegations must be involved in the negotiations and consultations on matters of substance. The President was right in saying that there was no need for a general debate on the single negotiating texts. He also endorsed the President's other proposals for informal consultations and submission of informal amendments, the setting of a four-week deadline, the involvement of the Drafting Committee and the need for co-ordination, all of which were designed to provide the necessary forward thrust. Finally, he expressed the hope that delegates would demonstrate a rare sense of involvement, so that substantial progress might be achieved at the current session.

41. Mr. LAI Ya-li (China) said that the informal single negotiating text was a procedural device and was therefore simply a working instrument without binding force. Thus, amendments could be made and new proposals discussed together with the texts. Moreover, since the texts had been put forward at the end of the preceding session and had not been discussed, each delegation should be given an opportunity to make general and specific comments at the present session. Secondly, he pointed out that all delegations must engage in discussions and consultations on an equal footing,

since all of them represented sovereign States and matters of substance concerning the law of the sea would have a direct bearing on each country. As some delegations, particularly those of developing countries, were relatively small, care should be taken to ensure that not too many subsidiary organs met at the same time. The Conference should focus first on major questions of principle, progress on which would contribute to the solution of the other questions. He stressed the importance which the third world attached to the establishment of a law of the sea régime; that would be a difficult task, and unity among the developing countries was essential if progress was to be made. His delegation would adhere to its position and work for positive results.

42. Mr. MAZILU (Romania) said that his delegation agreed with the proposals made by the President regarding the role of the various organs of the Conference. It would only emphasize that those organs should be open to the participation of all interested States, since, in order to be democratic, the new convention must reflect the contributions of all States.

43. Mr. BAKULA (Peru) said that special emphasis should be placed on the need for all States to participate in the negotiations. It was his understanding that the President's discussions with the Chairmen of the Main Committees would not be a substitute for meetings of the General Committee, which, according to the rules of procedure, must assist the President in ensuring the co-ordination and progress of the work.

44. He wished to mention, in passing, that his delegation would have some reservations both of substance and of form concerning the single text on the settlement of disputes.

45. He asked the President to provide the opportunity in the Plenary for a debate on the question of the peaceful uses of ocean space.

46. Mr. ZEGERS (Chile) supported the President's proposals concerning the organization of work. Although the work of the Committees would have priority over that of informal groups, there was nothing to prevent such groups from helping the Committees and the plenary Conference, and he drew attention in that connexion to the valuable assistance provided by the Group of Legal Experts. With regard to co-ordination, he said that consultations between the Chairmen of the Committees were no substitute for meetings of the General Committee, which he proposed should meet regularly, perhaps weekly, to consider the co-ordination of work.

47. Mr. VALENCIA RODRÍGUEZ (Ecuador) said that, while he agreed with the President on the importance of the three single texts, they were not final, because each country had maintained its position. Accordingly, amendments of substance in addition to those of form would be required in many cases, and delegations had the right to reiterate and maintain proposals previously submitted or to make new ones, as was pointed out in document A/CONF.62/WP.8.<sup>2</sup> That was particularly true with regard to the text regarding settlement of disputes submitted by the President. On that question, the plenary should prepare a single text which was the product of negotiations. Perhaps alternative wordings could be included in some chapters of the single texts, as that would be the only way for some delegations to give their views.

48. Although it was divided into separate sessions there was only one Conference, and participants could not ignore

<sup>2</sup> See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

what had been done at the earlier sessions. In many cases, the positions put forward at those sessions had not been withdrawn; that was very true of Ecuador's position regarding the 200-mile territorial sea.

49. All participating delegations must be consulted on all aspects of the work if practical results were to be achieved. Only thus could mutual concessions be ensured. However, he pointed out that some countries considered certain aspects so vital that they could not make concessions, and unless proper consideration was given to those aspects progress would be impossible.

50. Finally, he supported the President's proposals regarding the method of work and expressed the hope that, in cases where it was clear that the work of the Conference would benefit from meetings of small groups, the Secretariat would provide the necessary facilities, preferably at times which would not clash with meetings of the Main Committees.

51. Mr. KOZYREV (Union of Soviet Socialist Republics) said that his delegation supported the President's proposals and reiterated that the work must be resumed at the point at which it had been left off in Geneva. The single texts prepared by the Chairmen and the President were an excellent basis for preparing the convention. He recalled the point made in the General Committee regarding the broad understanding on the desirability of strengthening the results achieved at Geneva and, on that basis, seeking to reach agreement by consensus on a package deal regarding utilization of the oceans. His delegation supported the suggestion that amendments might be presented to the unofficial texts during informal meetings and that the Chairmen of the Committees could determine which amendments had broad support and should be taken into account. His delegation agreed that it would not be advisable to try to predetermine which texts and amendments would be given official status. Individual texts would become official only when they formed part of a single draft convention. Furthermore, his delegation agreed that the decisions of the Conference would have great political impact and would affect peace in future years. The Conference should reach decisions on all fundamental issues so as to preclude any possibility of dispute concerning the utilization of the world's oceans.

52. Mr. BAROODY (Saudi Arabia) observed that, if whatever convention was arrived at was not acceptable to China, the Soviet Union or the United States of America, the work would have been in vain. Accordingly, it was incumbent on the President to ensure that those three major Powers agreed on major issues; otherwise, the entire Conference would be a waste of time and money. If it was not possible to reach agreement on a single convention, the Conference should elaborate several conventions on different aspects of the law of the sea, in the hope that one day nations would come to realize they were all one family and that a single convention could then be achieved.

53. Mr. ABDEL MEGUID (Egypt) said that all Committee members should participate in consultations in order to ensure the acceptance and general application of the conven-

tion. Initially, particular attention should be paid to controversial issues; if agreement was reached on them, other issues could then be discussed. The method of work which had been suggested for the Third Committee by its Chairman was excellent and should be considered by the other Committees. A weekly plenary meeting, aimed at co-ordinating the work of the Main Committees, was desirable.

54. Mr. JAIPAL (India) said that the guidelines suggested by the President were reasonable, but a flexible approach was necessary in view of the differences of opinion which existed on important issues. Undue haste in the discussion of amendments might jeopardize the universality of the convention.

55. Because of his country's huge population, all resources within its jurisdiction were vital for its development. India recognized its responsibility not only to its own people but also to the international community, and would contribute actively to the negotiations. The informal single negotiating text provided a good basis for further negotiation, provided that no pre-conditions were implied.

56. Mr. WITEK (Poland) supported the procedural arrangements suggested by the President. A flexible approach was necessary and, while substantial changes to the informal single negotiating text should be avoided, quite significant changes should be admitted in paragraphs which lacked universal support, especially those connected with the question of land-locked and geographically disadvantaged States. The negotiating procedures must be clearly established from the beginning.

57. Mr. TREDINNICK (Bolivia) expressed the hope that coastal States would take full account of the needs of land-locked and geographically disadvantaged States. He supported the procedural proposals made by the President.

58. Mr. ZULETA (Special Representative of the Secretary-General) said that the Secretariat would consult with the President and the Committee Chairmen to ensure that informal meetings did not interfere with the work of the Main Committees. Since the Secretariat could not service every informal meeting, it was for the President and the Chairmen to decide on priorities.

#### Additions to the list of non-governmental organizations

59. Mr. HALL (Executive Secretary of the Conference) said that, in accordance with rule 66 of the rules of procedure, the following non-governmental organizations had asked to participate in the Conference: Pax Christi, International Catholic Peace Movement; the Population Institute and the World Alliance of Reformed Churches.

60. The PRESIDENT said that, if there was no objection, he would take it that the Conference approved the inclusion of those organizations in the list of non-governmental organizations.

*It was so decided.*

*The meeting rose at 6.15 p.m.*