

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

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

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## **28<sup>th</sup> meeting of the General Committee**

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume VI (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fifth Session)*

62. Mr. BAILEY (Australia) said that he shared the concern expressed by other representatives regarding the progress of the Conference, and associated himself with the proposals submitted by the representative of Chile. His delegation also supported the suggestions made by the representative of Kenya regarding intersessional negotiations in open-ended informal meetings.

63. Mr. MORALES PAUL (Venezuela) endorsed the suggestions made by the representative of Chile and said that he shared his distress regarding the status of the work of the Conference. He believed that that feeling of distress had two causes: firstly, a sense of responsibility towards Governments, and, secondly, concern about the future, about responsibility to future generations if the Conference failed.

64. His delegation was of the view that future effectiveness would depend largely on the organization of work, and it therefore supported the suggestions put forward by Chile and Kenya, although it had some doubts as to how well prepared delegations were for intersessional meetings. Perhaps, as a complement to the Chilean proposal, a smaller working party could be established, comprising representatives of the two groups which had adopted opposing positions, and even representatives of those holding moderate or compromise positions. That suggestion might allay the apprehension expressed by the representative of the United Kingdom by ensuring adequate representation in the informal negotiations. It should be added, in that connexion, that at such meetings delegations should be represented at the highest political level possible, by heads of delegations or by plenipotentiaries empowered to take decisions. He also suggested that the Chairman of the General Committee should preside over that small working party and that, in the selection of its members, consideration should be given to those countries which had shown the greatest interest in the work of the Conference, subject, of course, to the sovereign right of all delegations to take a position on the working party's conclusions.

65. Mr. UPADHYAN (Nepal) said that the representative of Ireland had very aptly described the next session as a decisive one, in a positive or a negative sense. The organization of work was of basic importance for the success of the next session, and he agreed with the remarks made by the representative of Chile on that subject. With regard to assessing the progress which had been made, he pointed out that, although a number of speakers had contrasted the achievements of the Second and Third Committees with the little progress made by

the First Committee, there was no certainty that such was actually the case. It was purely subjective to assume that all difficulties would be resolved if priority were given to First Committee matters. If progress had in fact been made in the Second and Third Committees, the Conference had a right to know about it. His delegation would listen carefully to the reports of the Chairmen of the Committees in the plenary, at which time it would have a further opportunity to state its views on the subject.

66. If a draft convention was to be produced at the next session, there must be the necessary political will. It was painful to admit that there had been no evidence of such a will at the current session, which placed delegations in the position of having nothing to report to their respective Governments. If that fundamental element was missing, the work of the Conference would be jeopardized and might continue indefinitely without ever achieving positive results. Unless a decision was taken at the next plenary meeting, the outlook would not be very encouraging.

67. His delegation had doubts regarding the usefulness and seriousness of negotiations in informal meetings between sessions. Governments could not venture to send representatives to such negotiations without being certain that the political will necessary for their success would exist.

68. Mr. TÜNCCEL (Turkey) said that, although some delegations were confident that the Conference would be able to conclude its work in the near future, his delegation felt that the work was not sufficiently advanced to permit forming an accurate idea of the future of the negotiations. In that connexion, his delegation did not share the optimism of the representative of Chile and believed that it was somewhat premature to expect that a consolidated final text of the convention could be drawn up in the near future. The procedure which had been followed by the First Committee for three years and which consisted of concentrating on a few, admittedly fundamental, articles and leaving aside the other outstanding issues, could not be considered satisfactory. The other Committees had proceeded in the same way. He stressed that the future success of the Conference did not depend on the time factor or the number of meetings held, but rather on the adoption of proper procedural measures and the existence of a genuine will to negotiate.

*The meeting rose at 1.05 p.m.*

## 28th meeting

Thursday, 16 September 1976, at 4.20 p.m.

Chairman: Mr. H. S. AMERASINGHE (Sri Lanka).

### Organization of the work at the next session of the Conference (concluded)

1. The CHAIRMAN summed up the proposals made at the previous meeting, on which a broad consensus seemed to be emerging. The proposals called for the next session of the Conference to be held in 1977 in New York, the proposed opening dates being 16, 23 and 30 May. Since some delegations had suggested that the session could last from six to seven weeks while others preferred a period of six to eight weeks, he recommended that a duration of seven weeks should be provided for with the possibility of a one-week extension.

2. The first two weeks would be devoted almost exclusively to First Committee matters so as to enable that Committee to catch

up with the other two Committees. Other meetings could, of course, take place during that period provided that they did not interfere with the work of the First Committee. In order to achieve the desired results, it was essential that the negotiations in the First Committee should be conducted by the heads of delegations themselves. The next two or three weeks would be devoted to Second and Third Committee questions, while the First Committee would, of course, continue its own work. During that period, the Conference would also meet in plenary to consider the question of the settlement of disputes, and formal discussions could take place on the preamble and final clauses of the convention. During the sixth week, the President of the Conference and the Chairmen of the Committees would draw up an informal consolidated single text, on the basis of which the

Conference could try to prepare a draft convention, which it would, if possible, adopt by consensus rather than by voting.

3. As to the organization of intersessional consultations, he considered the proposal interesting since it would make it possible for the various delegations to be well prepared for the next session. The task of organizing them could be left to the Chairmen of the Committees but any delegation could, of course, take the initiative of doing so and could, if it wished, ask the Secretariat to help by informing all members of the consultations and by subsequently notifying them of the results. Care should be taken to ensure that no country felt neglected.
4. Referring to the suggestions by the representative of Chile at the previous meeting concerning the organization of work and the objectives of the next session, he said it was premature to set objectives too rigidly since everything would depend on the progress that could be made. He thought, however, that after five weeks of meetings the Conference might be able to prepare an informal consolidated text.
5. Mr. ENGO (United Republic of Cameroon), Chairman of the First Committee, said he supported the proposal that intersessional consultations should be held since the time had come for political decisions to be taken. The participants in the consultations should make a common effort to find new means of solving outstanding problems and to determine to what extent present positions could be reviewed, if not totally changed. Stressing that it was essential not to create an atmosphere of confrontation once again in the consultations, he said he had no objection to their dealing with First Committee matters but did not consider it wise to try to adopt decisions at informal meetings.
6. Mr. DE LACHARRIERE (France) said that his delegation was concerned over the extremely meagre progress made at the current session. To ensure better results, sufficient time should be left between the two sessions so that the next session would not be merely a prolongation of the present one. In that regard, events seemed to have borne out the view of his delegation, which had not approved the choice of the dates for the current session, believing it to be too close to the previous session for delegations to review their respective positions. Such a review was a complex undertaking since it called for both machinery for communication among the many national departments concerned and consultations at the regional level, inasmuch as each country participated to varying degrees in one regional group or another.
7. The same considerations applied, of course, to the proposed intersessional consultations. It was quite natural that the geographical groups should meet since they helped to determine national positions, but there, too, it must be possible for the consultations to be held sufficiently in advance so that delegations could, if they wished, modify their positions.
8. As to the procedure to be adopted for the next session, he felt that overly rigid or overly ambitious planning should be avoided. A certain degree of flexibility was essential.
9. His delegation supported the suggestion that emphasis should be placed on the First Committee, which was far behind in its work, but at the same time the importance of the work still to be done in the Second and Third Committees should not be minimized, since the question of dispute settlement and the preamble and final clauses still had to be discussed.
10. The French delegation shared the view of other delegations that political will was the decisive factor.
11. Mr. TREPCZYNSKI (Poland) said that his delegation supported certain constructive elements in the proposals concerning the organization of the next session but would not like to see the work of that session focus chiefly on First Committee matters. The land-locked and geographically disadvantaged States were very eager for discussion of several other questions, which were important to them. He agreed with the French delegation that it would be premature to establish at the present stage the programme of work and the procedure to be followed at the next session since intersessional consultations were now being contemplated. It would be preferable to await the results of those consultations, particularly since there was reason to fear that during the coming months certain States might take unilateral decisions regarding, for example, the exclusive economic zone and the exploitation of the sea-bed. That being the case, it would be better to regard the proposals made at the previous meeting as providing guidance and to take the final decisions on the matter at the beginning of the 1977 session.
12. Mr. PERISIĆ (Yugoslavia) said that his delegation supported the first part of the proposals submitted by the Chilean delegation, namely, that the first two or three weeks of the next session should be devoted to First Committee matters.
13. His delegation felt that intersessional consultations would be useful only if they were informal in nature, were open to all States and dealt with those questions which had not yet been resolved. Furthermore, there would be no point in holding consultations before the beginning of 1977 since States needed sufficient time to digest the work of the current session and prepare for the 1977 session. His delegation also thought that consultations should be held at the highest possible level so that the participants could hold informed discussions on the basis of politically based positions. That was the only way to arrive quickly at valid solutions.
14. Mr. KAZEMI (Iran) supported the realistic and constructive suggestions made at the previous meeting by the representatives of Chile and Kenya on the organization of the work of the next session, particularly with regard to the First Committee. However, care should be taken not to lay down excessively rigid rules and to preserve a certain degree of flexibility; the procedural decisions could be left until 1977 session.
15. As to the proposed intersessional meetings, he stressed that they should be entirely informal and should in no case amount to a prolongation of the current session. He did not share the pessimism expressed by some delegations since he felt that the Conference had, in the final analysis, accomplished a great deal when one considered the huge number of problems confronting it. The future should therefore be faced with confidence.
16. Mr. KNOKE (Federal Republic of Germany) said that he approved the proposed interval between the two sessions and would prefer to see the next session held from 30 May to 15 July 1977. With regard to the organization of work, he thought that the programme should not be too ambitious. He agreed entirely that, in general, it should be based on the suggestions of the Chilean delegation, but the Conference should not be too rigid in adhering to those suggestions. The problems to be resolved were extremely complex; the International Law Commission had taken six and a half years to draw up the 1958 Conventions on the Law of the Sea. Since then, the concept of the common heritage of mankind and that of exploitation of the sea-bed had been formulated without taking another six years. There was therefore no cause for despair over the outcome of the work of the Conference.
17. With regard to intersessional meetings, he shared the opinion of the representative of France that national and regional bodies needed time to examine the proposals made at the Conference and that such meetings should therefore not take place too soon and should certainly not take the form of a conference. What must be avoided above all was to turn the Conference on the Law of the Sea into a permanent conference. He favoured informal meetings among groups representing all shades of opinion—if possible, at a high level.
18. While it was indeed desirable that some time be devoted to the work of the First Committee, attention should also be paid to the question of dispute settlement and to the preamble and final clauses, which had not yet been discussed. On the whole, there was no cause for pessimism.
19. Mr. LEARSON (United States of America) endorsed the proposals made at the previous meeting by the delegations of Chile, Kenya and the Soviet Union, which were by no means

mutually exclusive; he agreed with the representative of Chile that the next Conference should last at least eight weeks, and the representative of Kenya was entirely correct to emphasize the importance of the broadest possible attendance at the intersessional meetings.

20. Mr. ZEGERS (Chile) thanked those delegations which had favourably received the suggestions he had made at the previous meeting. A consensus was beginning to emerge within the Conference on establishing the procedure for the next session. The question was an extremely important one since the Conference had not followed that method at the present session and had come up against some very real problems, thus losing a great deal of time. Accordingly, it should at the present stage fix at least provisional dates by which certain goals were to be attained. Those dates could, of course, be changed at the next session if it was felt necessary to do so. The main thing was to establish a framework for discussions in order to justify the Conference in the eyes of Governments and public opinion. It was not only the law of the sea that was at stake but also a system of consensus which had been put to the test for the first time at an international conference. Such a system was extremely desirable in order to further the evolution of international law and was consistent with the United Nations Charter. If the Conference failed, the prestige of international organizations would be terribly undermined. Every effort should therefore be made to achieve a final result and to establish at least the over-all objectives; essentially, that meant drawing up a draft convention by the end of the next session. Partial agreements would therefore have to be reached, and that was the aim of the suggestions which had been put forward by his delegation and that of Kenya and then clarified and improved upon by other delegations. There seemed to be a consensus on the following points: first, the Conference should devote three weeks primarily to First Committee matters; that should not, however, prevent the General Committee from meeting nor should it prevent participants from working on questions dealt with by other Committees, it being understood that the heads of delegations would devote themselves primarily to First Committee matters, especially the question of a system of exploitation of the sea-bed. After the first three weeks, the Conference could devote two or three weeks to other questions, paying particular attention to the work of the Second and Third Committees but also discussing the preamble and final clauses of the convention and the question of dispute settlement; it should not, however, neglect the First Committee. It was also essential to fix the sixth week of the Conference as the provisional time-limit by which a consolidated text must be drafted. The President of the Conference and the Chairmen of the Committees could be given a mandate to that effect, thus establishing a framework for the discussions. He thought it should be possible to adopt a draft convention during the last few days of the Conference.

21. There also seemed to be a consensus concerning the need to encourage informal intersessional consultations; such consultations should be attended by as many as possible, should be open to all delegations and should, if possible, take place at a high level. The Secretariat should transmit the results of the consultations to all members, who would thus be familiar with those results without being committed by them. The General Committee could submit them to the Conference at its next plenary meeting so that a formal decision could be taken. It would be ideal if, at the plenary meeting, the Conference reached a decision by consensus.

22. The CHAIRMAN noted that the delegation of Chile wished to avoid the need for voting at the next session and to establish a consolidated text at the end of the sixth week. Flexibility and discretion would be the key to the work of the next session. For his part, he thought that decisions on questions of procedure should not be postponed until the next session since, if they were, at least two or three weeks would be lost. He noted that some delegations had expressed reservations but that on the whole the Chilean suggestions had been accepted in substance.

23. Mr. MHLANGA (Zambia) said that he wished to know how long the representative of Chile proposed to devote to Second and Third Committee matters. He thought that, even taking account of some crucial problems which had to be solved, it would be possible to establish a time-limit by which a consolidated text should be drafted.

24. The CHAIRMAN reminded the representative of Zambia that the delegation of Chile had submitted a very detailed programme of work; there could be no question of neglecting Second and Third Committee matters; it was simply a case of facilitating the work of the First Committee without, however, neglecting those problems which were of special interest to some delegations.

25. Mr. TÜNCCEL (Turkey) emphasized that the goals established by the General Committee should only be regarded as guidelines. The next session should not, under any circumstances, be bound by recommendations made at the present session; the Conference should merely try to complete its work along the lines suggested. His delegation reserved the right to make further statements at the plenary meeting after the President had submitted the complete text of the General Committee's recommendations.

26. At the request of Mr. JAYAKUMAR (Singapore), the CHAIRMAN recapitulated the main points on which the members of the General Committee had apparently agreed; if he heard no objection, he would take it that a consensus had been reached on those points.

*It was so decided.*

*The meeting rose at 5.20 p.m.*