

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.3/SR.34

34th meeting of the Third Committee

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

THIRD COMMITTEE

34th meeting

Monday, 13 June 1977, at 3.35 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Organization of work

1. The CHAIRMAN welcomed two new participants in the work of the Committee, the Socialist Republic of Viet Nam and the United Nations Council for Namibia.

2. The issues before the Committee—the protection and the preservation of the marine environment, the conduct of marine scientific research, and the development and transfer of technology with respect to the peaceful uses of the sea—were by their very nature global and universal, and their resolution consequently required a broad vision that went beyond narrow interests and rigid national positions. The relatively substantial progress made at the fifth session of the Conference on many critical issues within the terms of reference of the Committee justified beginning the current session with a sense of optimism.

3. At the current meeting the Committee was to consider the organization of its work. He suggested that, following past practice and in conformity with the suggestion made by the President of the Conference at its 77th meeting, all negotiations should be conducted informally, whether within the Committee as a whole or in smaller negotiating groups. As a rule, informal negotiating meetings should be open to all interested delegations, although consultations between delegations on the resolution of certain issues were not excluded. Informal negotiations of all kinds should be conducted with his knowledge, and their final outcome should be communicated to him as soon as possible so as to give him an over-all view of the negotiating process throughout the session. The division of the issues before the Committee into two groups, those involving protection and preservation of the marine environment and those involving marine scientific research and transfer of technology, might be continued, and, as at previous sessions, negotiations on the first group might be conducted under the chairmanship of Mr. Vallarta and those on the second under his own chairmanship, with assistance from the other officers of the Committee as appropriate. In view of the limited conference facilities and staff available, it seemed appropriate that informal meetings of the Committee should have priority over other group meetings and that every effort should be made to prevent clashes between meetings. Lastly, he repeated the suggestion made in his report on the previous session (A/CONF.62/L.18,¹ para. 48) to the effect that negotiations should start where they had left off.

4. He suggested that the Committee should adopt a selective and restrictive approach in deciding to which of the outstanding issues priority should be given at the current session; such a decision would not, of course, preclude the consideration of other issues which delegations might deem to be pertinent. A similar flexible approach had proved both viable and productive in the past. In line with his general assessment of progress on the item on protection and preservation of marine environment at the end of the fifth session (*ibid.*, para. 24), he suggested that negotiations at the current session should start with outstanding issues related to pollution from vessels with a view to making further progress with articles 21, 27 and 28, of part III of the revised single negotiating text (A/CONF.62/WP.8/Rev.1),² which had been considered at the fifth session in informal negotiations and in the Committee as a whole, with article 30, which had been considered in informal consultations only, and with the relevant provisions of section 8, particularly article 38. The issues in question might be considered in the following order: one, unresolved problems relating to article 30; two, article 28 and the relevant passages of section 8, and, three, article 21 and its harmonization with article 20, paragraph 2, of part II of the revised single negotiating text.

5. The major outstanding issue confronting the Committee in the field of marine scientific research was the régime for the conduct of marine scientific research and related matters. He suggested that the current negotiating effort should concentrate on articles 60, 64, 65 and 76, not necessarily in that order. What was needed was to work out a framework of rules of conduct which might form the legal basis for greater mutual trust between coastal States and States conducting research, and between developing and developed nations.

6. In his view, the main outstanding issues related to the development and transfer of technology were the functions and tasks of the International Sea-bed Authority (articles 85 and 86), and the definition of the rights and duties of holders, suppliers and recipients of technology (article 86). In that field, co-ordination and harmonization with the provisions of part I of the revised single negotiating text were obviously of utmost importance.

7. Bearing in mind the list of outstanding issues and the time available, he suggested that the Committee should devote five meetings during the current week and seven meetings the following week to the protection and preserva-

¹ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. VI (United Nations publication, Sales No. E.77.V.2).

² *Ibid.*, vol. V (United Nations publication, Sales No. E.76.V.8).

tion of the marine environment, with three meetings during the current week and one meeting the following week devoted to marine scientific research. Night meetings could be scheduled when necessary, and the officers of the Committee should assess the status of the work at the end of the following week.

8. In response to the Committee's wish, the Secretariat had prepared a "cross-reference" paper on the issues on which close co-ordination and co-operation with the First and Second Committees were required. A co-ordination and harmonization operation had not proved possible at the fifth session owing to lack of time but had clearly become indispensable, and he had therefore started consultations with the Chairmen of the First and Second Committees on the subject.

9. In conclusion, he expressed the hope that realism and a sense of responsibility would guide the Committee's efforts to build up a viable and equitable international legal order for the use of the seas and their resources. One of the Committee's major assets had always been its spirit of co-operation, and he believed that it would succeed in making its contribution to the preparation of a single informal composite negotiating text.

10. Mr. AL-HAMID (Iraq) expressed his delegation's full support for the methods which the Chairman had suggested for the conduct of negotiations. His delegation attached great importance to maintaining close co-ordination and co-operation with the First and Second Committees with regard to questions which were dealt with in all three Committees. However, the Third Committee's first duty was to agree on provisions relating to the protection and preservation of the marine environment and marine scientific research, because those questions had been entrusted to it alone. Such provisions should serve the interests of all States, ensure the protection of the marine environment, facilitate the development of scientific research of benefit to all mankind and make possible the transfer of technology to developing countries, particularly to those States which could utilize the technology for the purpose of exploiting marine resources and fulfilling their obligations under the future convention.

11. In the matter of co-ordination, it was to be hoped that the Chairman would keep the Committee informed of the progress made in the First and Second Committees with regard to the provisions relating to the competence of the International Sea-bed Authority and that of the coastal States in regard to scientific research and the preservation of the marine environment. His delegation was prepared to accept any compromise solution provided that it served the interests of all States and all mankind and safeguarded the rights of land-locked and geographically disadvantaged countries. He believed that the United Nations could play a paramount role in organizing and co-ordinating endeavours in the field of marine scientific research and preservation of the marine environment.

12. Mr. TIKHONOV (Union of Soviet Socialist Republics) endorsed the Chairman's suggestions on the organization of the Committee's work.

13. In the matter of the protection and preservation of the marine environment, progress would be faster if delegations concentrated on completing consideration of the key issues referred to by the Chairman, primarily in informal consultations and negotiations. At the fifth session, the Committee had achieved much by referring a number of issues relating to the prevention of pollution to a negotiating group; that group should continue its work and

submit the results to the Committee for review. It was to be hoped that delegations would not revert to issues on which agreed solutions already existed; it would be a pity to undermine the compromises to which many delegations, including his own, had subscribed informally—sometimes reluctantly—for the sake of achieving a generally acceptable convention.

14. With regard to marine scientific research, members of the Committee would recall that his delegation had announced an adjustment of its position at the fifth session and was supporting the proposals of the developing countries on the establishment of a "consent" régime for the conduct of all forms of marine scientific research in the economic zone and on the continental shelf.

15. Mr. YTURRIAGA BARBERAN (Spain) supported the Chairman's suggestions on the organization of the work of the Committee. In that connexion, he observed that at the previous session the texts of amendments proposed during informal negotiations had been circulated in English only; it would facilitate progress if the texts of proposed amendments could be translated into the other working languages. Furthermore, in view of the large number of amendments that had been proposed, it would also be useful if the Secretariat could provide the Committee with a list of amendments in numerical order of the articles to which they related.

16. He agreed with the Chairman's suggestions regarding the outstanding issues to be given priority at the current session and regarding the co-ordination and harmonization of the Committee's work with that of the other Committees. In addition to the articles referred to by the Chairman, article 42 of part III of the revised single negotiating text, concerning straits used for international navigation, would also have to be harmonized with the corresponding articles in part II. Furthermore, before the Committee could take any final decision on article 65, concerning the cessation of scientific research activities, it would first have to reach agreement on articles 58 and 59.

17. Mr. STEINER (Secretary of the Committee) said that in the past the texts of amendments had not been translated into other working languages in order to avoid delaying the work of the Committee. If the Committee wished all such proposals to be translated into all the working languages, the Secretariat would do its best to comply. He would inform the Committee of the time required for translation after consultation with the Department of Conference Services.

18. Mr. MAWHINNEY (Canada) agreed with the Chairman's suggestions regarding the organization of the Committee's work and the procedure to be followed. It was logical to begin with consideration of article 30, which was the core of the provisions relating to the enforcement powers of the coastal State in the exclusive economic zone. In dealing with that question, care should be taken to ensure an equitable balance between the rights and responsibilities of coastal States, flag States and the port States.

19. He agreed that it was very important to harmonize the texts of parts II and III of the revised single negotiating text. In that connexion, account should be taken of a number of questions dealt with in part II of the text, such as the definition of non-innocent passage as it related to marine pollution, and the standard-setting powers of coastal States in the territorial sea. The provisions of article 22 of part II, concerning nuclear-powered ships, would have to be brought into line with existing State and international practice. Another matter which required further considera-

tion was the responsibilities of States parties regarding the protection of the marine environment from damage as a result of exploration and exploitation of the resources of the deep sea-bed.

20. He supported the suggestion made by the representative of Spain on the compilation of a list of the amendments.

21. Mr. MITROPOULOS (Greece) endorsed the suggestions of the Chairman regarding the organization of the work of the Committee and co-ordination and harmonization with the other Committees. He also supported the proposal made by the representative of Spain.

22. Mr. JAIN (India) supported the Chairman's suggestions regarding the informal negotiating procedure to be followed, the time-table for the Committee's work and the need for co-ordination with other Committees. With regard to outstanding issues, he believed that the whole of article 21 should be considered, in particular paragraph 5 concerning special areas, to which his delegation attached considerable importance. Although the question had been discussed extensively at the preceding session, the approach adopted had been unsatisfactory. Consideration should also be given to articles 23, 24 and 26, concerning the competence of coastal States in the matter of enforcement, some of the provisions of which seemed to conflict with those contained in articles 17 and 18 concerning the legislative competence of coastal States. The entire question of liability should also be given further consideration.

23. As far as marine scientific research was concerned, since articles 60, 64 and 65 had been considered at length at the fifth session of the Conference, no useful purpose could be served by taking them up again. Article 76, however, should certainly be taken up in the context of the settlement of disputes as a whole. Lastly, in view of the extreme importance to the developing countries of the question of transfer of technology, careful consideration should also be given to the provisions of articles 85 and 86.

24. Mr. ALI (Bangladesh) said that, in order to be meaningful, any future convention would have to meet the reasonable aspirations of both the developing and the developed countries. To achieve that end, it needed to be widely accepted by the international community and to be such as to ensure the peaceful and compulsory settlement of disputes.

25. The language of the revised single negotiating text concerning the obligation of States to prevent pollution, to protect the marine environment and to promote programmes of scientific, technical, educational and other assistance to developing countries for the prevention and control of pollution, was too vague and should be made more precise. With regard to scientific research, the most critical issue was whether the consent of coastal States would be required for scientific research in areas under their jurisdiction. It was true that such a requirement would impede research, cause delay in and, in many cases, the cancellation of research projects, and would increase costs. Nevertheless, his delegation supported the inclusion of such a requirement in order to remove misgivings about the *bona fides* of research projects, participation in them and the availability of data and scientific knowledge to the developing coastal State.

26. His delegation supported the general approach of the articles contained in part III of the revised single negotiating text vesting the relevant environmental rights and duties in the State having jurisdiction over the activity in question. That approach was justified by the close

relationship that existed between the application of environmental measures and the over-all regulation of activities.

27. The conclusion of a treaty would establish an international régime for the sea-bed beyond coastal State jurisdiction in accordance with the concept of the common heritage of mankind, would ensure freedom of navigation on the high seas without interference from the coastal State and would achieve for the coastal States broad control of living and non-living resources in the economic zone. The alternative would be a costly and bitter struggle for supremacy in navigation and control over sea-bed resources.

28. Mr. FIGUEIREDO BUSTANI (Brazil) agreed with the Chairman's suggestions concerning the organization of work of the Committee. He suggested that one or two informal meetings should be allotted to other articles of particular concern to delegations, such as articles 18, 19, 20 and 47. He supported the suggestion made by the representative of Spain concerning the translation of amendments.

29. With regard to marine scientific research, he was gratified to note the Soviet Union's reassurance of its support for the ideas of the developing countries. He agreed with the representative of India that the Committee should not refer directly to article 60 at the current session, since the proposal made by the Chairman in paragraph 35 of his report on the previous session (A/CONF.62/L.18) already constituted a step forward from that basic text.

30. Mr. REFFOUH (Morocco) agreed with the programme of work suggested by the Chairman. Among the outstanding issues to be discussed at the current session, his delegation attached great importance to articles 44 and 75 concerning responsibility and liability. He pointed out that at the fifth session his delegation, together with the delegation of Egypt, had proposed certain amendments to those articles. It was their hope that those amendments would be taken up at the current session.

31. He agreed with the Brazilian representative's suggestion that a number of meetings should be set aside for consideration of articles of particular concern to certain delegations which had not been referred to by the Chairman.

32. Mr. RUIVO (Portugal) said that he was in agreement with the proposed programme of work for the forthcoming two weeks; he noted, however, that no provision had been made for discussing the transfer of technology, which embraced a number of difficult issues.

33. The protection of the marine environment involved many aspects besides pollution, and it was important not to treat the two issues as one and the same. Article 12 of part III of the revised single negotiating text, for example, was important because it dealt not only with pollution, but with other matters which would be the subject of co-ordination discussions with the First Committee.

34. He supported the proposal on compiling a list of the amendments proposed to part III and that on arranging additional informal meetings for the discussion of issues of particular concern to certain delegations. It was essential, however, that the discussions at those meetings should deal with the substance of the issues in question and not be used to restate positions of principle. Similarly, the meetings set aside for work on the subject of scientific research in the exclusive economic zone and on the continental shelf should concentrate, as the Chairman had said, on such practical and pressing problems

as the dumping of waste in those areas of the seas. He said that the Convention should cover not only dumping but also incineration at sea by special ships, a method which was increasingly used by some countries to dispose of certain categories of waste. Finally, he stated that it was the intention of the Portuguese delegation to submit specific proposals on the matter.

35. Mr. LEITZELL (United States of America) said that discussions on the protection of the marine environment should also cover such matters as vessel-source pollution and the responsibility of individual States for the results of their sea-bed exploration activities mentioned in articles 19 and 25 of part III. Article 61, which imposed restrictions on the publication of marine research results, was a difficult one for his delegation since the object of all research was the dissemination of knowledge and should be discussed, and there was no reason why marine research should be treated differently from other research in the matter of publication. The question of a régime for marine scientific research was one of the two most serious outstanding issues to be settled in the limited remaining time. Since the Committee had so far found no acceptable compromise, he hoped that there would be time in the following two weeks for individual consultations and meetings on the provisions of article 60, before the consolidated text was drafted. Co-ordination between the Second and Third Committees would, in any event, be required on the subject of marine scientific research, as well as on the legal status of the economic zone.

36. The CHAIRMAN said that, in view of the wishes expressed by several delegations, matters other than those he had mentioned in connexion with marine scientific research could be considered during the two weeks of meetings so far planned. He hoped, however, that representatives would avoid general debate or argument at the extra meetings and concentrate on producing specific proposals.

37. Mr. VON WELCK (Federal Republic of Germany) said that one earlier speaker had stated that general agreement had been reached on article 60 at the previous session. That was not the case, since several delegations, including his own, had been unable to agree to the article as it stood. He was prepared to support the proposal that the negotiations should be resumed at the point at which discussion had ended, leaving article 60 aside while seeking agreement on the following articles and reverting to it when the other articles had taken definite shape. He agreed with the representative of Portugal that meetings should be arranged on the transfer of technology, a very important item in the proposed package deal.

38. Mr. BAKULA (Peru) said that he was in agreement with the proposed time-table of meetings. He supported the suggestion that extra meetings should be held on the subject of the transfer of technology.

39. Members of the Conference should remember, in relation to the composite text, that agreement had been reached at the previous session to have the composite text

drafted, by the collegiate method, by the President of the Conference and the Chairmen of the Committees, in consultation with the Chairman of the Drafting Committee and the Rapporteur.

40. All delegations were agreed that the deliberations on a "consent" régime were of fundamental importance, but the issue was linked to the basic problem of the legal status of the economic zone, which was a *sine qua non* of any agreement for all developing countries. He was gratified to learn that the USSR delegation supported the developing countries' stand on a "consent régime". In his view, acceptance of that stand was the only possible way for the Conference to achieve a Convention which would provide legal guarantees of the rights of all parties and safeguard the future well-being of the developing countries.

41. Mr. JAIN (India) observed that he had not intended in his earlier statement to convey the impression that issues important to delegates should not be discussed at the current session. He did believe that, since a great deal of time had already been spent on article 60, further work on that article was not required at the current session. However, he was not opposed to devoting more time to the issue if other delegations felt it was of importance to them.

42. Mr. SUQAT (United Arab Emirates) said that when the protection of the marine environment was discussed at the preceding session, his delegation had been unable to give its views on paragraph 5 of article 21 and paragraph 3 of article 27. He therefore hoped that the Committee would reconsider those two paragraphs. His delegation had also reserved its position on one provision of article 60. He shared the view of the representative of Portugal that it was important to devote sufficient attention to the transfer of technology.

43. Mr. GAVIRIA LIEVANO (Colombia) said that he supported the request for a list of the proposed amendments to the revised single negotiating text. It was unfortunate that the work of the Third Committee could not be carried out in parallel with that of the other Committees at the current session, in view of the need for the Conference to produce a composite text.

44. The CHAIRMAN, summarizing the debate, said that he would ask the Secretariat to compile a single document containing the amendments proposed at the fifth session to the revised single negotiating text. Such a document would not, however, be a formal working instrument, especially since certain proposals had already been superseded. On the matter of the translation of proposals, he suggested that they might be translated as necessary; some of the more straightforward proposals might not require translation. He stressed that the time-table of meetings which he had proposed was a tentative outline, intended to help delegations. The order of items would be finalized after consultations on the scheduling of discussions on protection of the marine environment and marine scientific research.

The meeting rose at 6 p.m.