

Third United Nations Conference on the Law of the Sea

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77th Plenary meeting

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PLENARY MEETINGS

77th meeting

Monday, 23 May 1977, at 3.35 p.m.

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

Opening of the sixth session

1. The PRESIDENT declared open the sixth 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 Conference observed a minute of silence for prayer or meditation.

Adoption of the agenda (A/CONF.62/52/Rev.1)

The agenda was adopted.

Statement by the Secretary-General

2. The SECRETARY-GENERAL said that the fact that a sixth session of the Third United Nations Conference on the Law of the Sea was beginning attested to the complexity and broad range of the issues involved in efforts to achieve a universal code of conduct for the oceans and for the future exploitation of sea-bed resources in accordance with the principle of the common heritage of mankind. The Conference was close to achieving one of the most important treaties in the history of human affairs, one which would affect the lives of all generations to come and open a new and potentially huge resource for use by and for the benefit of all national societies. That goal was worthy of the members' utmost efforts.

3. The oceans covered 70 per cent of the world's surface, and it was essential to develop a comprehensive law and international régime to make certain that the exploration and exploitation of their resources would benefit all. Without such a system, conflict would become the price of the sea's resources and everyone would be the loser.

4. He could not over-emphasize the importance which he attached to that endeavour. The nations of the world could not sensibly or safely face the future without some régime of law and order on and beneath the oceans, and the international community could not afford failure to produce an agreement.

5. He had been gratified to learn that consultations had been held since the close of the fifth session in an atmosphere of conciliation and compromise; it was his hope that the same spirit would continue to prevail in the coming weeks, especially during the discussion of the problems of international stewardship of the ocean floor beyond the limits of national jurisdiction. Conflicting positions and national interests could be reconciled only through a process of negotiation and accommodation. Problems re-

mained not only with regard to the international zone, but also in the work of all the Committees, especially that concerned with the jurisdiction of coastal States and the rights of other States whose geographical situation put them at a disadvantage. However, given the divergencies of opinions on nearly every major issue that had existed at the beginning of the Conference, the remaining problems were assuredly not beyond resolution if they were addressed realistically and in a spirit of compromise.

6. The decision of the General Assembly to seek a single convention covering a broad range of law-of-the-sea issues, through what was called a "package deal", had to be respected. Crucial as agreement on the international zone might be, members also had to consider the importance of the progress made in other areas, such as the extent of the territorial sea, the new concept of economic zones, navigation through straits and waterways accommodating international traffic, the preservation of the marine environment, the conduct of scientific research and the problems of access for land-locked States. All those questions bore directly on the question of future law and order in the oceans, and any remaining problems in those areas should be settled without delay.

7. The Conference should also be viewed as part of the great efforts being made throughout the United Nations system to establish a new international economic order. The old order was no longer capable of meeting the world's economic requirements. Despite great efforts, the gap separating the poor and the rich countries of the world continued to widen. Providing the developing countries with greater access to the riches of the sea was a major supportive effort in the search for a more equitable and more efficient global economic system. Of particular importance, in the light of the unprecedented growth in world population and the consequent demands for greater food production, was the potential protein harvest from living marine resources.

8. In recent decades, and at an accelerating pace since deliberations had begun in 1974, the traditional framework of the law of the sea had come under increasing strain. Advances in technology and the actions of States in response to new capabilities, together with the growth in the membership of the community of nations, made it obvious that the former system was doomed and that States could not be expected to be bound by rules which many of them had had no part in making or which were plainly not in their national interest.

9. The Conference was therefore confronted with a problem larger than the separate and specific issues of ocean management. Unless a new and broadly accepted law of

the sea emerged through international agreement, the prospect would be one of each State determining its own view, with proliferating claims to ocean space and resources. To accept such a situation—favouring, as it would, power at the expense of justice and creating unforeseeable risks of conflict—was unthinkable; it would be a refutation of the common heritage principle contained in the Declaration adopted without dissent by the General Assembly seven years earlier (resolution 2749 (XXV)) and would be directly contrary to the purposes and principles of the Charter of the United Nations.

10. As Secretary-General of the United Nations, it was his duty to draw the Conference's attention to those dangers, which went beyond issues relating to the law of the sea, and to urge it to move forward in recognition of the very grave responsibilities placed upon it. The efforts of the United Nations to work out a global agreement on the law of the sea had begun in 1958, resulting in the longest and largest Conference in United Nations history. It was not an exaggeration to say that failure to produce a convention on the law of the sea after such a long and arduous process would seriously undermine the credibility of the United Nations as a forum for international negotiations: that could not be permitted to happen. There was too much at stake, and he appealed to representatives and their Governments to act at once. In conclusion, he wished the Conference every success for the sake of a future that depended heavily on what it accomplished.

Statement by the President of the Conference

11. The PRESIDENT said that unless agreement was reached on the issues confronting the Conference within the two forthcoming substantive sessions, it would be overtaken by events. Instead of what had been expected to be a new law of the sea so widely acceptable as to endure for generations to come, serious conflicts over the interpretation of customary international law in regard to the matters involved would remain and the world would be faced with a situation more tense than ever before in the history of the oceans. Nevertheless, agreement reached in haste and under pressure of circumstances could be equally disastrous.

12. It should be borne in mind that the Conference had two main purposes. The first was to devise a régime for the exploration and exploitation of the sea-bed and the subsoil thereof beyond the limits of national jurisdiction and for the use of its resources for the benefit of mankind, with special regard to the interests of developing nations, whether coastal or land-locked. The area in question and its resources had been declared the common heritage of mankind, falling in neither the category of *res nullius* nor that of *res omnium communis*, but in the category of property which had been inherited by all mankind and was to be exploited on its behalf. The second main purpose of the Conference was to review the existing body of international law of the sea, with a view to reaching general agreement on the limits and nature of national jurisdiction, and to adapt the régime of the oceans to changes in international economic relations and thereby contribute to a just and equitable new international economic order.

13. As matters stood, an increasing number of States were adopting measures which, if the Conference delayed in reaching a final agreement, could not but make the process of negotiation more difficult, to the detriment chiefly of developing land-locked and geographically dis-

advantaged States. Moreover, technically advanced nations were preparing to explore and exploit deep sea-bed mineral resources under legislation which would safeguard their investments should the Conference fail to achieve a generally acceptable convention.

14. The Conference had to be guided by two principles. First, real meaning should be given to the common heritage principle, in the form of the early conclusion of a convention and, secondly, the convention should be broadly acceptable to all. It was not just a question of avoiding anarchy on the seas; there was also the need to demonstrate that the world community could meet such a grave challenge to its capacity to agree on basic rules of conduct.

15. The declaration of principles which had been so solemnly adopted should be demonstrated to be an honest assertion of the international community's determination to achieve a fair settlement for the benefit of mankind as a whole, and one which served the interests of international co-operation and peace. He was certain that he could count on the assistance of all participants in the conduct of the Conference's work to that end.

Organization of work

16. The PRESIDENT informed the Conference that he had received a letter dated 17 May 1977 from the Acting President of the United Nations Council for Namibia expressing the desire of the Council to participate in the sixth session of the Conference with full status. That request was based on General Assembly resolution 31/149. At earlier sessions, in keeping with the invitation extended by the General Assembly in paragraph 8 (b) of resolution 3067 (XXVIII), the Council had participated in the Conference and its Committees in accordance with the rules of procedure of the Conference, in particular rule 62.

17. If he heard no objection, he would take it that the Conference agreed that the United National Council for Namibia should be invited to participate fully in its work. The delegation of the Council should be seated with the delegations of States, would have the right to make statements at meetings of the plenary and the Committees, which would appear in the summary records, and at informal meetings as well. The Secretariat would continue to distribute any written statement or any informal proposals or suggestions from the Council in accordance with its wishes.

It was so decided.

18. The PRESIDENT, reporting on the discussion at the 29th meeting of the General Committee of his proposals on organizing the work of the sixth session (A/CONF.62/BUR/5), said that one focus of attention had been the recommendation by the General Committee referred to in the first and second paragraphs of that document and his proposal that the period in question should be fixed definitely at three weeks. Representations had, however, been made to him, on behalf of the group of land-locked and geographically disadvantaged States, that discussions in the Second and Third Committees should not be deferred until the end of the third week.

19. It had been suggested at the meeting of the General Committee earlier in the day that the officers of the Second and Third Committees should meet as soon as possible to decide on the organization of their work. If they decided to organize negotiations, delegations should be given at least one week's notice to enable them to summon their Second and Third Committee experts to New York. How-

ever, any arrangements made for other meetings should not conflict with the meetings held early in the session to facilitate the work of the First Committee. Delegations which were deeply interested in the work of the Second and Third Committees would be given every facility for the conduct of negotiations. In the absence of the Chairmen of the Second and Third Committees, the Vice-Chairmen would be able to arrange the necessary meetings.

20. The General Committee had also discussed at its 29th meeting the proposal in document A/CONF.62/BUR/5 on the preparation of a single informal composite negotiating text. Attention had been drawn to an apparent discrepancy between that proposal and the recommendation made by the General Committee at the fifth session to the effect that the President with the Chairmen of the Committees, adopting the collegiate method, should prepare an informal single composite text. In view of the considerable importance which had been attached to the discrepancy, the Conference might for the time being confine itself to deciding in principle that at the end of the fifth week of the Conference, after the plenary had reviewed the status of the negotiations, he should be given the authority to prepare the composite text. A decision could be taken at that stage on the exact procedure to be followed. It had certainly been his intention to rely on the reports of the Chairmen of the three Committees, the Chairman of the Drafting Committee and the Rapporteur-General in preparing the composite text.

21. The Committees could, of course, continue to hold negotiations while the composite text was being prepared. He had suggested that as far as possible all negotiations should be conducted informally and that, whatever arrangements were made for chairing the informal groups, the Committee Chairmen should retain control over all the work of their Committees.

22. He attached particular importance to his proposal that the Conference should decide to utilize all eight weeks of its current session. In conclusion, he suggested that all the Committees should determine as early as possible how they would organize their work for the current session.

23. Mr. ZEGERS (Chile) said that there seemed to be general agreement with the President's suggestions that the first three weeks of the session should be devoted primarily to First Committee matters and that the duration of the session should be eight weeks. Those decisions in no way conflicted with the agreements reached at the final plenary meeting of the fifth session. He pointed out that it had also been agreed at that meeting that at the end of the sixth week of the current session the President with the Chairmen of the Committees, adopting the collegiate method, would prepare an informal single composite text on the basis of which the Conference would prepare a draft convention. His delegation was of the view that it was unnecessary to change that or any other arrangement agreed to at that meeting.

24. Mr. KOZYREV (Union of Soviet Socialist Republics) welcomed the participation in the Conference of the representatives of the heroic people of Viet Nam, a people successfully unified in one independent State. The coming of peace to that country had greatly strengthened its international position. The USSR was convinced that Viet Nam would play a significant part in solving the complex problems facing the Conference.

25. His delegation supported the President's recommendations in document A/CONF.62/BUR/5. In the matter of preparing a composite text, however, the Conference should abide by the decision taken at the 76th

plenary meeting; it was absolutely essential to retain the collegiate method, which would provide the surest guarantee of balanced wording on questions on which differences prevailed. Mere consultations with the Chairmen of the Committees were not enough if the composite text was to provide a satisfactory basis for the draft convention and so bring the Conference nearer to consensus.

26. A speedy decision on the organization of work would help to ensure real progress towards solving questions of substance. Meetings of the First Committee and related informal intergroup meetings on the issues causing the greatest difficulties should begin without delay. The multilateral consultations held before the opening of the session had indicated that prospects existed for generally acceptable compromise solutions.

27. The status of the world's oceans needed to be regularized so that the necessary conditions for effective and orderly utilization of the oceans and their resources might be created with a view to the progress and well-being of all mankind. Only the Conference could achieve that objective; there was no rational alternative to an internationally agreed solution. To that end, his delegation would do its utmost to advance the work of the Conference.

28. Mr. VALENCIA-RODRIGUEZ (Ecuador) said that the President's suggestions on the organization of work for the session were generally consistent with the consensus reached at the final plenary meeting of the fifth session. On that occasion, his delegation had expressed reservations because of its view that the progress of the Conference was being hampered by the increasingly rigid positions of the interest groups and by the readiness of a number of major Powers to disregard the vital positions of certain States once their own aspirations had been satisfied. In order to overcome the problems of the first type, political decisions were called for, principally on the part of the major industrialized Powers, since they could not expect certain developing States to continue to make concessions indefinitely without making concessions of their own. So far, no State had been prepared to take the first step towards making a significant concession because of the conviction that it would receive nothing in return.

29. As far as the difficulties of the second type were concerned, the major Powers should recognize that the vital national positions of other States could not be ignored or underestimated. It was essential to seek solutions which safeguarded those positions. At the current session, the Conference should adopt the procedure most likely to break the existing deadlock. That procedure should at the same time be flexible enough to accommodate any new circumstances that might arise.

30. His delegation agreed that during the first three weeks of the session the Conference should concentrate on the work of the First Committee without, however, neglecting the informal consultations on outstanding issues before the Second and Third Committees. For a number of States, the questions dealt with in those informal negotiations were just as important as those considered by the First Committee and, in some instances, vital to its work. A decision on the procedure for preparing a single informal composite negotiating text should, in his delegation's view, be left until the end of the fifth week of the session; in common with many others, his delegation was not prepared to give a blanket authorization until the content of the texts to be consolidated was known.

31. In that connexion, he reiterated that Ecuador's basic position was that of a country which, for 25 years, had exercised full sovereignty over a territorial sea extending 200 miles without prejudice to the fundamental freedoms of the international community. Those basic rights should continue to be duly protected in the texts to be negotiated. His delegation had already indicated the wordings which would best satisfy its position.
32. Accordingly, the texts to be incorporated in the composite text should acknowledge that the exclusive economic zone was an area of national jurisdiction and not part of the high seas, and that residual rights would necessarily have to be accorded to the coastal State. In addition, a satisfactory régime for the exploration and exploitation of living resources in the exclusive economic zone, particularly of highly migratory species, was required, and that implied recognition of the sovereign rights of the coastal State. It would be remembered that those rights had been the result of solemn declarations made by States—which continued to be the unchallenged source of international law—long before the convening of any United Nations conference on the law of the sea. The validity of such declarations was indisputable, and a great many States had chosen to assert their rights over a 200-mile zone in similar fashion.
33. Given flexible procedures and sincere efforts by all concerned to resolve existing difficulties, the Conference could make progress at the current session, but to make the preparation of a draft convention the objective of the session was surely over-optimistic. As matters stood, that goal could be attained only by the sacrifice of the positions of certain States, and they would certainly not be prepared to consent to that.
34. Mr. JACOVIDES (Cyprus) said that his delegation fully agreed with the proposals submitted by the President regarding the organization of the work of the current session, including the proposal on the preparation of a single informal composite negotiating text. Such a text would take the Conference to the next and, it was to be hoped, final stage of its work. In his view, there was no conflict between the President's suggestions and those made by the delegation of Colombia and other delegations in the General Committee as to how best to utilize the first three weeks of the current session.
35. As far as the Second Committee was concerned, a number of outstanding issues had been inconclusively examined at the fifth session, each of them of considerable importance to many delegations. It would be worth while to hold informal meetings on those issues during the coming three weeks, prior to the start of that Committee's formal proceedings. The officers of the Third Committee had already arranged to meet to consider what action they might recommend in the light of the President's proposals and the wishes expressed by members of that Committee.
36. The over-all effort should be to ensure unhindered concentration on questions concerning the First Committee and on the settlement of disputes. Time was of the essence, and it was his hope that all delegations, taking advantage of the prevailing propitious climate, would do their utmost to achieve irreversible progress, if not actually to conclude the work of the Conference at the current session.
37. Mr. ENGO (United Republic of Cameroon) welcomed the decision to invite the representatives of the Council for Namibia to participate in the deliberations of the Conference. Africa would not be duly represented in international forums on the basis of the sovereign equality of States until it became possible for all its peoples to exercise their right to self-determination. He also welcomed the representatives of the Socialist Republic of Viet Nam.
38. On the subject of the organization of the work of the session, he said that it would be difficult for his delegation to be represented at informal meetings of the Second and Third Committees, since his Government, having been informed that those Committees would not meet, had decided that only those representatives involved in the deliberations of the First Committee should attend the first part of the session.
39. Mr. NUSEIBEH (Jordan) said that, in view of the possibility of serious conflict if there was undue delay in preparing a convention, some way should be found to reach a tentative consensus pending the completion of an agreed text. Such an arrangement might avert a general stampede towards unilateral action, which would jeopardize the conclusion of a convention and harm the interests of the land-locked and geographically disadvantaged States.
40. Mr. AL-WITRI (Iraq) welcomed the representatives of Viet Nam and the United Nations Council for Namibia as fully-fledged participants in the Conference.
41. His delegation fully supported the President's proposals concerning the organization of work, and agreed that meetings of the negotiating groups of the Second and Third Committees should proceed concurrently with the work of the First Committee. At the previous session the Second Committee had made no perceptible progress, particularly with regard to the rights of land-locked and geographically disadvantaged States. There could be no progress towards drafting the convention until the rights of all countries, whatever their geographical position, were harmonized.
42. The composite text to be prepared should therefore safeguard the rights of all participants in the Conference. His delegation deplored the unilateral action taken by certain countries in extending their jurisdiction over adjacent waters before the rules were codified.
43. Mr. GAYAN (Mauritius), speaking on behalf of the group of African States and of his own delegation, warmly welcomed the delegations of Viet Nam and the United Nations Council for Namibia to the Conference.
44. He agreed in general with the President's recommendations. Although he had doubts about the wisdom of deciding at so early a stage on the need for an eighth week, experience suggested that the full eight-week period would be needed. With regard, however, to the proposal in the penultimate paragraph of document A/CONF.62/BUR/5 to the effect that the informal composite text should be brought before the plenary once again for general examination, he pointed out that such a process would be very time-consuming, since another general debate was bound to ensue. He hoped that the text would be brought before the plenary only for the purpose of determining the issues requiring further negotiation.
45. The PRESIDENT said that, if he heard no objection, he would take it that the Conference agreed to his recommendations.
- It was so decided.*
46. Mr. BAKULA (Peru) said that it should be clearly understood that no change had been made in the text of

the decision which the Conference had approved at the 76th plenary meeting with regard to the preparation by the President, with the Chairmen of the Committees, adopting the collegiate method and in consultation with

the Chairman of the Drafting Committee and the Rapporteur-General, of a composite text.

The meeting rose at 5 p.m.

78th meeting

Tuesday, 28 June 1977, at 12.05 p.m.

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

Organization of work

1. The PRESIDENT read out the text of the document containing the proposals regarding the preparation of the informal composite negotiating text which he had made at the 32nd meeting of the General Committee (A/CONF.62/L.20). The proposals had been approved and assurances had been given that the comments made by Member States would be given full consideration. It was clear that the composite text would not be ready by the beginning of the following week so that negotiations could continue concurrently with its preparation. He had further announced his intention of presenting a memorandum listing the issues that constituted the essential elements of the package on which general agreement was needed and outlining the main differences. When the composite text was considered in plenary the list of key issues could also be considered and agreement could be reached on the order in which they should be discussed.

2. Mr. CASTAÑEDA (Mexico) said that the coastal states group attached great importance to the elaboration of a composite text. Confrontation should be avoided at all costs and the emphasis should be on persuasion. The group's position should not be interpreted as signifying any doubt as to the President's integrity or capacity to guide the debates and the elaboration of a composite text. Such a text should be elaborated jointly and the term "collegiate method" should not be used. The President's proposals—which incorporated the recommendations submitted to him by delegations from the coastal states group—constituted a basis on which to proceed.

3. Noting that different interpretations had been placed on the President's comments in the General Committee he said, with regard to the President's comment that, in the event of a difference of opinion between the Chairman of one of the Committees and the President, the Chairman's viewpoint would prevail, that his delegation felt that that would not, as some had asserted, be tantamount to granting a power of veto to the Chairmen and that the problem had been wrongly stated. A number of States had adopted legislation or other methods based on the revised single negotiating texts, and his delegation could not accept the proposition that those texts could be changed lightly or by any one person. If they were to be changed, it must be by joint decision of the Chairman of the Committee concerned and the President; if no joint agreement could be reached, then the existing texts should remain in effect.

4. Mr. VALENCIA-RODRIGUEZ (Ecuador) said that his delegation supported the procedure suggested by the President. Just as the Conference acted by consensus, so,

too, should the team responsible for elaborating the composite text. His delegation did not interpret the proposals as giving any single person the power of veto over proposals. The procedure to be adopted should be determined by the team that was going to do the work and, in that connexion, he agreed with the representative of Mexico.

5. The composite text must not be just a compilation of the revised single negotiating texts but must offer a different approach to the search for a satisfactory formula to fill the existing gaps and to solve matters that remained outstanding, while taking due account of the vital positions of the various delegations and groups.

6. With regard to the proposed memorandum of outstanding issues, he said that it could not be prepared until the contents of the composite text were known since it was conceivable that, once the various texts had been integrated, there might not be any basic questions outstanding. Once the composite text was available, the Conference would have to determine whether the text should be considered in plenary or referred to the various Committees. In the view of his delegation, the suggestion that the arrangements for the future work of the Conference should be discussed at the end of the current session was very important.

7. Mr. HAN (Republic of Korea) fully supported the President's proposals, but stressed that interest groups should be consulted during the preparation of the composite text. His delegation hoped that the text would not simply be a collection of competing views but would reflect a courageous attempt to solve the difficult problems outstanding.

8. Mr. ROBLE (Somalia) said that his delegation was beginning to question the utility of the Conference and would support any procedure designed to expedite and enhance its work. It endorsed the President's interpretation of the concept of the collegiate method and believed that, in view of the experience and knowledge of the Chairmen of the Committees, their opinions would be given the respect they deserved. His delegation also endorsed the explanations which the President had given when introducing his proposals in the General Committee. Finally, it believed that the two weeks of the session remaining after the composite text had been presented should be utilized for an exchange of views regarding the preamble and final clauses of the draft treaty.

9. Mr. TURKMEN (Turkey) said that, although his delegation was not sure that the Conference had made sufficient progress—particularly with regard to the matters discussed in the Second Committee—it placed its trust in the wisdom of the President. It had taken careful note