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52nd meeting of the Second Committee

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SECOND COMMITTEE

52nd meeting

Friday, 14 April 1978, at 11.35 a.m.

Chairman: Mr. A. AGUILAR (Venezuela).

Organization of work

1. The CHAIRMAN drew attention to the document on the organization of work (A/CONF.62/62) which contained the relevant decisions taken by the Conference in plenary session. He pointed out that, of the hard-core issues which were to be given priority and which were listed in recommendation 5 of the document, two issues came exclusively within the competence of the Second Committee. Those issues were: right of access of land-locked States and certain developing coastal States in a subregion or region to the living resources of the exclusive economic zone or, according to the alternative formulation proposed; right of access of land-locked States and geographically disadvantaged States to the living resources of the economic zone (item (4)); and definition of the outer limits of the continental shelf and the question of payments and contributions with respect to the exploitation of the continental shelf beyond 200 miles or, according to the alternative formulation proposed, definition of the outer limits of the continental shelf and the question of revenue sharing (item (6)).

2. Two other essential questions also came within the competence of the Second Committee but were related to issues that were to be dealt with by the Conference in plenary. Those questions were, first, the settlement of disputes relating to the exercise of the sovereign rights of coastal States in the exclusive economic zone (item (5)), a question which depended on the organization of the exclusive economic zone, and secondly the delimitation of maritime boundaries between adjacent and opposite States and settlement of disputes thereon (item (7)). In the latter case, the issue of delimitation was clearly a matter for the Second Committee, while the issue of disputes was a matter for the plenary; and the two issues would be dealt with together.

3. With regard to the procedure for dealing with the principal questions, it appeared from the document on the organization of work and from the explanations that had been given later, that items (4), (5) and (7) would be considered by a negotiating group to be constituted by the plenary, which would also decide on the composition of the group and would elect its chairman.

4. On the other hand, according to recommendations 2 and 7 in the document on the organization of work, the Second Committee was to deal with item (6) and decide whether it had received sufficient consideration or whether a negotiating group should be established. In that connexion, he recalled that at the sixth session of the Conference, the Second Committee had asked the secretariat to prepare a study, including maps, illustrating various formulae for the definition of the outer limits of the continental shelf. That study had not been prepared before the end of the sixth session, but it was now ready and should be circulated to delegations

during the coming week. Accordingly, before considering the substance of item (6), it would be preferable to wait until the study with the accompanying maps was available in all working languages so that delegations might have a clear idea of the conclusions reached by the experts.

5. Mr. MORALES-SUÁREZ (Colombia) said that in his opinion item (6) had not received sufficient consideration because an essential document—the study requested from the secretariat—was not yet available. To avoid any further loss of time, could not the study be circulated as early as possible in the following week?

6. The CHAIRMAN said that the secretariat was not at present able to indicate the exact date on which it would be able to submit the study; but it would be informed, through the Secretary of the Committee, of the importance which delegations attached to the study and would be asked to try to speed up its reproduction and distribution.

7. Mr. TUERK (Austria) said that it was most regrettable that the secretariat study was not yet available. He supported the statement made by the representative of Colombia.

8. Mr. CHAO (Singapore) supported the Chairman's suggestion that consideration of item (6) should be postponed until the secretariat study was available. He was surprised that, at the end of the third week of the seventh session, the study was still not ready although it had been requested more than eight months earlier and the secretariat had stated that it would be circulated before the beginning of the session or in any case at the opening of the session.

9. Mr. HAYES (Ireland) said that he supported the statement by the representative of Colombia and requested that the secretariat study should be circulated as soon as possible, so that the Second Committee could begin its work on item (6), which it alone was competent to discuss.

10. Mr. ZELAYA UBEDA (Nicaragua) thought that consideration should perhaps be given to the possibility of defining precise guidelines for the work of the negotiating group, particularly in order to identify trends of opinion and to ensure that the group would provide proof at last that the Conference was not beginning a new series of discussions but was reaching the stage of final decisions.

11. The CHAIRMAN observed that, in addition to the hard-core issues listed in recommendation 5, the Committee could also consider other issues, such as those mentioned in recommendation 6, item (i) (regime of islands) and item (ii) (enclosed and semi-enclosed seas). In accordance with recommendation 2, the Committee should decide whether those two issues had received sufficient consideration or whether a negotiating group should be established to continue discussion on them.

12. He pointed out also that the list given in recommendation 6 was not exhaustive and that the Committee could

therefore decide to consider other matters within its competence.

13. Mr. SHEHAB (Egypt) said he agreed entirely with the Chairman's interpretation of recommendation 6. The issues mentioned in that paragraph were given by way of example; and the list was not exhaustive. The Committee was therefore entitled to examine other issues within its competence and to refer them to negotiating groups.

14. The question of navigation in straits should, in his opinion, be the subject of further negotiations and should be included among the issues to be added to recommendation 6, because the working group established in New York to consider that question had met only once and had not achieved results that were sufficiently constructive. He therefore agreed with the representatives of Spain, Yemen and Oman that consideration of the question should be continued. He left it to the Chairman to decide whether it should be considered by the Committee itself or by a negotiating group, but he hoped that in any case it would receive some attention from the Committee.

15. Mr. ARIAS SCHREIBER (Peru) said that in his opinion the items mentioned in document A/CONF.62/62 should be considered in the order in which they appeared in the document, without giving priority to any particular question. In the case of each of the issues listed in recommendations 5 and 6, a decision should be taken whether the issue had received sufficient consideration and could be taken up in the plenary, or whether a working group should be established to continue consideration of it.

16. Mr. MWANGAGUHUNGA (Uganda) said that he also agreed with the Chairman's interpretation of document A/CONF.62/62. He supported the proposal, which the representative of Nepal had made at the 90th plenary meeting, for including in recommendation 6 the question of the right of access of land-locked States to and from the sea and freedom of transit, since he considered that the issue should be examined by the Committee.

17. Mr. MAHIU (Algeria) said that he also believed that recommendation 6 should permit delegations to discuss a number of questions which they regarded as important and which were still open to discussion. With regard to the issues mentioned in recommendation 6, items (i) and (ii), he agreed with the Chairman that the Committee should decide either to take up those issues itself or to refer them to negotiating groups.

18. Mr. HAHM (Republic of Korea) said he agreed with the representative of Egypt that the question of navigation in straits had not received sufficient consideration and should be given further study. He therefore supported the proposal made at the 90th and 91st plenary meeting by Spain, Yemen and Oman that the Second Committee or a working group should continue consideration of that issue. He also considered that the question of navigation in the territorial sea had not received sufficient consideration and should be further studied, particularly in view of the recent catastrophe resulting from the wreck of a giant oil tanker on the French coast.

19. Mr. KRAVETS (Ukrainian Soviet Socialist Republic) said that he was glad to note that the Conference had finally tackled the fundamental issues, though he was sorry it had waited until the third week of the session before doing so. The Committee did not have much time left to settle the important and difficult issues before it. Those issues, items (4) to (7) of recommendation 5, should be given more thorough consideration; and delegations had a hard task ahead of them, since they would have to participate in the negotiating groups to be set up to deal with those issues in the few days still remaining before the Committee had to report to the plenary.

20. He did not agree, therefore, with those delegations which wished to add the question of navigation in straits to the other issues before the Committee, because he believed that that issue had received sufficient consideration both in the plenary and in the working group to which it had been referred. He also believed that the draft article on that issue was an extremely sensible text and one on which the whole balance of the future convention depended. That balance might be jeopardized if the question were reopened.

21. He was therefore firmly opposed to the idea that any special study of the issue of navigation in straits should be undertaken either by the Committee or by a negotiating group. At the same time, he agreed with the representative of Uganda that the list of issues in recommendation 6 was not exhaustive and that the Committee was free to take up other issues.

22. Mr. VALDEZ (Ecuador) repeated the statement made by his delegation at the 90th plenary meeting when the programme of work had been adopted.

23. Mr. LUPINACCI (Uruguay) supported the suggestion that the Committee itself should examine the whole of the informal composite negotiating text,¹ or that part within its competence which was not a subject matter for the negotiating groups. In fact, it would be well to modify the negotiating text with respect to certain questions or specific points which were incorporated into the text without having been duly examined or which had not been in concordance with the fundamental points that were the aim of the negotiations prior to the drafting of the negotiating text. Those points were not of such consequence as to justify the establishment of negotiating groups, but they did require modification which was not within the competence of the Drafting Committee since they involved matters of substance. The Second Committee, therefore, was the body which must undertake that work expediently as a preliminary stage to the work of revision of the negotiating text, which was to be done by the presidential team with a view to facilitating the consensus.

24. Mr. AKRAM (Afghanistan) said that he fully supported the Ugandan proposal that the issue of the right of access to and from the sea and freedom of transit for land-locked countries should be considered by the Committee or by a working group.

25. Mr. SULEIMAN (Oman) said he agreed with the representative of Egypt that further consideration should be given to the question of the right of passage in straits. In fact, all the issues before the Conference should now be the subject of serious negotiation.

26. Mr. TEMPLETON (New Zealand) said he disagreed with delegations which had stated in the plenary that the question of the regime of islands (item (i) of recommendation 6 in document A/CONF.62/62) had not received thorough consideration. On the contrary, the article on that question in part VIII of the composite negotiating text had already appeared in the initial text and had been considered several times, and it had not been thought necessary to amend it either in the revised text nor in the composite negotiating text. There was therefore no need to revert to it, and it would even be undesirable to set up a negotiating group to consider it. He warned the Committee against a possible proliferation of negotiating groups, which might create problems for small delegations.

27. Mr. HAMOUD (Iraq) said he was in favour of setting up sub-groups consisting of a small number of representatives of States directly interested in questions that required more detailed examination. Those questions included the régime of islands, enclosed or semi-enclosed seas, and the legal

¹Official Records of the Third United Nations Conference on the Law of the Sea, vol. VIII (United Nations publication, Sales No. E.78.V.4).

régime of the exclusive economic zone. With regard to the last-mentioned question, the negotiating group which had already reached a compromise solution at previous sessions could simply be re-established. On the other hand, his delegation considered that the issue of straits used for international navigation had received sufficient consideration and there was no need to set up a negotiating group to discuss it. Moreover part III of the composite negotiating text, which dealt with that issue, had established a delicate balance. It could be amended only slightly, and only by the Committee itself.

28. Mr. RUIVO (Portugal) said that the work should be concentrated on a small number of key problems rather than on a multitude of issues. First, therefore, an attempt should be made to set up a working group to consider the question of the right of access to the sea for land-locked countries.

29. However, if it were decided to add more issues to the list of those requiring further examination, his delegation thought that the Committee should revert to the articles on conservation of living resources, which needed to be updated.

30. Mr. ATEIGA (Libyan Arab Jamahiriya) proposed that working groups should be set up to study the regime of islands and the question of enclosed or semi-enclosed seas. He wholeheartedly supported the Egyptian proposal concerning international straits.

31. The CHAIRMAN suggested that, in view of the preceding discussions, the various groups should hold further consultations with a view to determining the order of priorities for the issues to be discussed and the procedures for considering them. He advised delegations to devote the afternoon to consultations for that purpose. It was highly desirable that the work should be organized rationally in view of the limited time available to the Committee, and also in order to enable delegations to attend meetings of working groups and negotiating groups set up by the plenary on questions within the competence of the Committee. To facilitate matters, he requested delegations which had similar views to submit a written statement of their position by the beginning of the following week, indicating their preference as to the issues to be considered and the manner in which they should be dealt with.

32. Mr. ZULETA (Special Representative of the Secretary-General) said that the secretariat was intending to circulate its report on the definition of the outer limits of the continental shelf (A/CONF.62/C.2/L.98 and Add.1) on the morning of the following Wednesday in limited quantities only; one copy would be available for each delegation. More copies of the document would be circulated later for Governments and their experts.

The meeting rose at 1.10 p.m.

53rd meeting

Monday, 17 April 1978, at 11 a.m.

Chairman: Mr. A. AGUILAR (Venezuela).

Organization of work

1. Mr. TAHINDRO (Madagascar) said that he thought that two separate working groups should be set up, one on the régime of islands and the other on enclosed or semi-enclosed seas.

2. Mr. CALERO RODRIGUES (Brazil) observed that although the Conference had decided to give priority to the hard-core issues listed in recommendation 5 in document A/CONF.62/62, it had also decided in recommendation 1 to discuss and resolve all other issues which remained outstanding. The fact that the Conference was short of time did not necessarily require it to deal only with the most difficult issues and leave aside the others. Several delegations had stressed the importance they attached to certain issues which did not appear in recommendations 5 and 6. A number of negotiating groups should therefore be set up to consider those issues, which would then be examined by the Committee before it reported to the plenary.

3. In his opinion, the question of the exclusive economic zone should be given further consideration, since the present text of article 58 of the informal composite negotiating text¹ which dealt with the rights and duties of other States in the exclusive economic zone did not make it clear that military activities such as manoeuvres with the use of weapons and explosives should not be carried out in the zone without the consent of the coastal State. An unambiguous provision to that effect should be added to the present text of article 58.

4. Also, the existing text of article 60, read in conjunction

with article 80, did not make it clear that the coastal State had the exclusive right to construct and to authorize and regulate the construction, operation and use of all artificial islands, installations and structures in the exclusive economic zone and on the continental shelf. Article 60, paragraph 1, should therefore be amended to make that understanding perfectly clear.

5. Finally, article 73 as presently drafted, referred expressly only to the enforcement powers of the coastal State with regard to its rights pertaining to the living resources of the exclusive economic zone. It was his delegation's understanding that the article was intended to relate to the enforcement powers of the coastal State with regard to all the rights referred to in article 56. It would therefore seem necessary to introduce an appropriate amendment to article 73, paragraph 1.

6. The Committee should therefore set up two or three negotiating groups to examine issues which delegations considered particularly important, and should then review successively the various issues mentioned in document A/CONF.62/62, as the representative of Peru had proposed.

7. Mr. BAYONNE (Congo) said that he regarded the informal composite negotiating text prepared in New York in 1977 as a sound basis for negotiation, but thought that some additions should be made to the text and that negotiations should be resumed on certain controversial issues referred to in document A/CONF.62/62. In particular the legal régime of the exclusive economic zone should be reconsidered; and, more specifically, article 73 relating to the enforcement of laws and regulations of the coastal State should be amended as the representative of Brazil had proposed, in line with the provisions of article 56. The prerogatives of coastal States in

¹Official Records of the Third United Nations Conference on the Law of the Sea, vol. VIII (United Nations publication, Sales No. E.78.V.4).